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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 629

INLAND WATERWAYS CORPORATION, UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, ET AL., PETITIONERS

vs.

CARY H. HARDEE, RECEIVER OF COMMERCIAL NATIONAL BANK OF WASHINGTON, D. C.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JANUARY 31, 1939
CERTIORARI GRANTED MARCH 13, 1939

SUPREME COURT OF THE UNITED STATES

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A In the District Court of the United States for the District of Columbia

No. 59008 in Equity

ROBERT C. BALDWIN, RECEIVER, COMMERCIAL NATIONAL BANK OF WASHINGTON, D. C. A CORPORATION, PLAINTIFF

vs.

INLAND WATERWAYS CORPORATION, A CORPORATION; UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, A CORPORATION; GEORGE H. DERN, SECRETARY OF WAR; ARTHUR L. FLINT, GENERAL PURCHASING OFFICER AND CHIEF OF WASHINGTON OFFICE, THE PANAMA CANAL; HOMER S. CUMMINGS, ATTORNEY GENERAL OF THE UNITED STATES, SUCCESSOR IN INTEREST TO ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES; CREED FULTON COX, CHIEF OF BUREAU OF INSULAR AFFAIRS, WAR DEPARTMENT; C. F. BROWN, DISBURSING AGENT, PHILIPPINE REVENUE, BUREAU OF INSULAR AFFAIRS, WAR DEPARTMENT; HENRY MORGENTHAU, JR., DEFENDANTS

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Amended bill of complaint*

Filed June 4, 1936

In the Supreme Court of the District of Columbia

Holding an Equity Court

Equity No. 59,008

ROBERT C. BALDWIN, RECEIVER, COMMERCIAL NATIONAL BANK OF WASHINGTON, D. C. A CORPORATION, PLAINTIFF

vs.

INLAND WATERWAYS CORPORATION, A CORPORATION; UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, A CORPORATION; GEORGE H. DERN, SECRETARY OF WAR; ARTHUR L. FLINT, GENERAL PURCHASING OFFICER AND CHIEF OF WASHINGTON OFFICE, THE PANAMA CANAL; HOMER S. CUMMINGS, ATTORNEY GENERAL OF THE UNITED STATES, SUCCESSOR IN INTEREST TO ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES; CREED FULTON COX, CHIEF OF BUREAU OF INSULAR AFFAIRS, WAR DEPARTMENT; C. F. BROWN, DISBURSING AGENT, PHILIPPINE REVENUE, BUREAU OF INSULAR AFFAIRS, WAR DEPARTMENT; HENRY MORGENTHAU, JR., WASHINGTON, D. C., DEFENDANTS

The Amended Bill of Complaint of the plaintiff filed, with leave of Court first had and obtained, represents to this Honorable Court as follows:

1. The plaintiff is a citizen of the United States and a resident of the District of Columbia, and brings this suit as the duly appointed and qualified receiver of the Commercial National Bank of Washington, D. C., a national banking association organized under the laws of the United States, formerly having its place of business and conducting its operations in the District of Columbia, and as more fully hereinafter shown.

2. The defendant, Inland Waterways Corporation, is a corporation organized and existing under the Act of Congress of
2 June 3, 1924 (43 Stat. p. 360), and acts amendatory thereof, and located and having its place of business in the District of Columbia, and is sued as hereinafter shown.

3. The defendant, United States Shipping Board Merchant Fleet Corporation, is a corporation organized and existing under the laws of the District of Columbia and located and doing business therein, and is sued as hereinafter shown.

4. The defendant, George H. Dern, is a citizen of the United States and resident of the District of Columbia. Said defendant is Secretary of War of the United States and is sued as such in his official capacity incident to the performance of his duties with reference to the Canal Zone Territory on the Isthmus of Panama, and also incident to the performance of his duties on behalf of the Government of the Philippine Islands, all as more fully hereinafter set forth.

5. The defendant, Arthur L. Flint, is a citizen of the United States and resident of the District of Columbia, and is sued in his official capacity as General Purchasing Officer and Chief of Washington Office, the Panama Canal, and as more fully hereinafter shown.

6. The defendant, Creed Fulton Cox, is a citizen of the United States and resident of the District of Columbia, and is sued as Chief of the Bureau of Insular Affairs, War Department, and as more fully hereinafter shown.

7. The defendant, C. F. Brown, is a citizen of the United States and a resident of the District of Columbia, and is sued as Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, and as more fully hereinafter shown.

8. The defendant, Homer S. Cummings, is a citizen of the United States and resident of the District of Columbia, and is Attorney General of the United States, and is sued in his official capacity as
Attorney General as successor in interest to the Alien
3 Property Custodian of the United States, as more fully hereinafter shown.

8. (a) The defendant, Henry Morgenthau, Jr., is a citizen of the United States, temporarily residing in the District of Columbia, and is sued as the custodian of certain funds claimed by plaintiff as assets of the Commercial National Bank of Washington, representing the proceeds of certain bonds and certain other moneys paid under mistake of law to George H. Dern and Creed Fulton Cox and transmitted by them to The Chase National Bank of the City of New York and thereafter transmitted by said Chase National Bank to said defendant, Henry Morgenthau, Jr.

8. (b) The defendants, and each of them, are sued in both their individual and official capacities.

9. The Commercial National Bank of Washington, D. C., on, to wit, February 27, 1933, closed its doors and suspended its operations, and was found and determined to be insolvent by the Comptroller of the Currency of the United States, and thereafter, on February 28, 1933, plaintiff, Robert C. Baldwin, was appointed receiver and qualified as such and since such appointment and qualification has been, and now is, the receiver of said bank and is now acting in such capacity.

10. The plaintiff avers that on, to wit, the 18th day of July 1930, defendant Inland Waterways Corporation opened a savings deposit account in said Commercial National Bank and from time to time thereafter defendant deposited various sums of money therein, and at suspension and closing of said bank the credit balance on deposit in said savings account, together with accrued interest compounded monthly to the date of said suspension, amounted to the sum of, to wit, $271,113.05. Plaintiff further avers that on, to wit, the 5th day of March 1931, the Inland Waterways Corporation opened a
4 checking account in said Commercial National Bank, and from time to time thereafter deposited various sums of money therein, and at suspension and closing of said bank the credit balance on deposit in said checking account, together with accrued interest compounded monthly to date of said suspension, amounted to the sum of, to wit, $211,543.52.

That on divers dates after the opening of the aforesaid deposit accounts, and during the existence of said accounts, said Commercial National Bank unlawfully and illegally pledged with and to said Inland Waterways Corporation, as security for the repayment of the indebtedness of the bank created by the deposit of said funds in said accounts, certain of the assets of said bank consisting of various and sundry bonds of the par value of, to wit, the sum of $500,000, a more detailed description and list of which is hereinafter set forth in Exhibit A hereto attached and made a part hereof by this reference.

Plaintiff avers that there was no authority or capacity in said Commercial National Bank to pledge said assets as aforesaid as security for the debts created incident to said deposits of said Inland Waterways Corporation, and that said bonds thereupon became a trust, and were so held as such by defendant Inland Waterways Corporation, for the benefit of said bank, its depositors, creditors, and stockholders.

Plaintiff further avers that after the suspension of said bank and on, to wit, April 20, 1933, plaintiff acting under mistake of law, illegally redeemed from said Inland Waterways Corporation a portion of the aforesaid assets so pledged, consisting of, to wit, United States 4¼ Liberty Loan Bonds of October 15, 1933–38, of a par value of, to wit, the sum of $245,000, by the erroneous and unlawful payment to said Inland Waterways Corporation of, to wit, the sum of $245,000.00.

Plaintiff therefore avers that said illegal payment constituted a
5 trust fund for the benefit of the depositors and creditors and stockholders of said bank and as such is recoverable by plaintiff from said Inland Waterways Corporation, together with interest on said sum of $245,000 at the legal rate from April 20, 1933 (the date of such illegal payment) to the date of recovery of said sum by plaintiff, subject to adjustment and deductions for the dividends hereinafter indicated.

That on, to wit, April 20, 1933, said Inland Waterways Corporation sold the residue of said collateral theretofore illegally pledged as aforesaid, for the sum of, to wit, $261,215.63. Plaintiff avers that the action of said Inland Waterways Corporation in selling said remaining collateral as aforesaid, for said sum of, to wit, $261,215.63, was illegal, and without authority of law, and that the proceeds of said sale became charged with, and constituted, a trust for the benefit of the depositors and creditors and stockholders of said bank and as such is recoverable by plaintiff from said Inland Waterways Corporation, together with interest on said sum of $261,215.63 at the legal rate, from, to wit, April 20, 1933 (the date of said illegal sale) to the date of recovery of said sum by plaintiff, subject to adjustment and deductions for the dividends hereinafter next indicated.

Plaintiff further avers that on, to wit, September 26, 1933, a first dividend of 20% of the amount of outstanding claims against said Commercial National Bank, and on, to wit, November 13, 1933, a second dividend of 30% upon the outstanding claims against said Commercial National Bank, were paid to the depositors and creditors of said bank who had duly established their claims against said bank as general creditors, and accordingly plaintiff concedes that the trust fund hereinbefore set forth as recoverable by plaintiff from said
Inland Waterways Corporation is properly subject to djust-
6 ment and deduction in the sums representing the aforesaid dividends of 20% and 30% respectively, paid to the general creditors of said Commercial National Bank, plus a further deduction and adjustment in the sum of, to wit, $21,804.16 refunded and returned by said Inland Waterways Corporation to plaintiff on, to wit, April 25, 1933.

11. The plaintiff avers that on, to wit, the 18th day of August, 1917, the United States Shipping Board Emergency Fleet Corporation, the name and title under which the defendant United States Shipping Board Merchant Fleet Corporation was formerly known, opened a deposit account in said Commercial National Bank and from time to time thereafter the defendant deposited various sums of money therein, and at suspension said account was carried under the caption "United States Shipping Board Merchant Fleet Corporation, Agent Deposit Account", and the credit balance on deposit in said account at the suspension and closing of said bank amounted to the sum of, to wit, $264,302.16. Plaintiff further avers that, on to wit, the 14th day of January, 1926, the defendant, under its former name of United States Shipping Board Emergency Fleet Corporation, opened another deposit account in said bank, and from time to time thereafter deposited various sums of money therein, and at the suspension and closing of said bank the credit balance on deposit in said account, which was carried under the caption "United States Shipping Board Merchant Fleet Corporation, Agent Good Faith Deposit Account", amounted to the sum of, to wit, $144,995.12. A copy of the deposit contract is attached hereto, marked Exhibit B-1, and made a part hereof by this reference.

That thereafter the name of defendant was altered from "United States Shipping Board Emergency Fleet Corporation" to "United

States Shipping Board Merchant Fleet Corporation." That during the existence of said accounts said Commercial National Bank unlawfully and illegally pledged with and to said United States Shipping Board Merchant Fleet Corporation, or its predecessor in name, as security for the repayment of the indebtedness of the bank created by the deposit of said funds in said accounts, certain of the assets of said bank consisting of various and sundry bonds of the par value of the sum of, to wit, $400,000, a more detailed description and list of which is hereafter set forth, marked Exhibit B-2, attached hereto and made a part hereof by this reference.

7

Plaintiff avers that there was no authority or capacity in said Commercial National Bank to pledge said assets, as aforesaid as security for the debts created incident to said deposits of said United States Shipping Board Merchant Fleet Corporation, or its predecessor in name, and that said bonds thereupon became a trust, and were so held as such by defendant United States Shipping Board Merchant Fleet Corporation, or its predecessor in name, for the benefit of said bank, its depositors, creditors and stockholders.

Plaintiff further avers that after the suspension of said bank and on, to wit, April 13, 1933, and April 18, 1933, respectively, plaintiff acting under a mistake of law, illegally redeemed from said United States Shipping Board Merchant Fleet Corporation a portion of the aforesaid assets so pledged, consisting of, to wit, $75,000 par value United States Treasury 3⅜% Bonds due March 15, 1943, which were redeemed by the receiver as aforesaid on, to wit, April 13, 1933, and to wit, $200,000 par value Fourth Liberty Loan 4¼% Bonds due October 15, 1933-38, which were redeemed as aforesaid, on, to wit, April 18, 1933, by the erroneous and unlawful payment to said United States Shipping Board Merchant Fleet Corporation of the total sum of, to wit $281,695.31. Plaintiff therefore avers that said illegal total payments in the sum of, to wit, $281,695.31 constituted trust funds held for the benefit of the depositors and creditors and stockholders of said bank and as such are recoverable by plaintiff from said United States Shipping Board Merchant Fleet Corporation, together with interest on said sums so illegally paid from the date of such payment to the date of recovery of said sums by plaintiff, subject to adjustment and deductions for the dividends hereinafter indicated.

8

Plaintiff avers that on, to wit, April 17, 1933, said United States Shipping Board Merchant Fleet Corporation sold the residue of said collateral theretofore illegally pledged as aforesaid, for the sum of, to wit, $125,929.69. Plaintiff further avers that said defendant, United States Shipping Board Merchant Fleet Corporation, illegally collected and retained the proceeds representing the income in the form of interest coupons affixed to said pledged securities in the sum of, to wit, $5,515.49. Plaintiff avers that the action of said United States Shipping Board Merchant Fleet Corporation in selling said remaining collateral as aforesaid for the sum of $125,929.69, was illegal, without authority of law, and that the proceeds of said sale became charged with, and constituted, a trust for the benefit of the depositors and creditors and stockholders of said bank and as such is recoverable by plaintiff from said United States Shipping Board Merchant Fleet Corporation, together with interest from, to

wit, April 17, 1933 (the date of said illegal sale), to the date of the recovery of said sum, with interest, by plaintiff, subject to adjustment and deductions for the dividends hereinafter indicated.

Plaintiff avers that the action of said United States Shipping Board Merchant Fleet Corporation in collecting and retaining the income in the form of interest coupons on said pledged securities was illegal and without authority of law, and that such
9 income so collected became charged with, and constituted, a trust for the benefit of the depositors and creditors and stockholders of said bank, and as such is recoverable by plaintiff from said United States Shipping Board Merchant Fleet Corporation, together with interest on said sum of, to wit, $5,515.49, from the date of such collections to the date of recovery of said sum by plaintiff, subject to adjustment and deductions for the dividends hereinafter indicated."

Plaintiff further avers that on, to wit, September 26, 1933, a first dividend of 20% of the amount of outstanding claims against said Commercial National Bank, and on, to wit, November 13, 1933, a second dividend of 30% upon the outstanding claims against said Commercial National Bank, were paid to depositors and creditors of said bank who had duly established their claims against said bank as general creditors and accordingly plaintiff concedes that the trust funds hereinbefore set forth as recoverable by plaintiff from said United States Shipping Board Merchant Fleet Corporation are properly subject to adjustment and deductions in the sums representing the aforesaid dividends of 20% and 30%, respectively, paid to the general creditors of the said Commercial National Bank, plus a further deduction and adjustment in the sum of, to wit, $4,270.17, refunded and returned by said United States Shipping Board Merchant Fleet Corporation to plaintiff on, to wit, April 27, 1933.

12. The plaintiff avers that on, to wit, the 1st day of May, 1911, the Secretary of War opened a deposit account in said Commercial National Bank, which account was carried under the caption of "Government of Canal Zone", in accordance with a certain contract entered into by the then Secretary of War and the Commercial National Bank, a copy of which is hereto annexed, marked Exhibit C–1 and made a part hereof by this reference, and from time to time thereafter said Secretary of War deposited various sums of
10 money therein, and at suspension and closing of said bank the credit balance on deposit in said savings account amounted to the sum of, to wit, $711,622.92.

Plaintiff further avers that on divers dates after the opening of the aforesaid deposit account, and during the existence of said account, said Commercial National Bank unlawfully and illegally pledged with and to the then Secretary of War, by the delivery to his subordinate officer, the then General Purchasing Officer and Chief of the Washington Office, The Panama Canal, as security for the repayment of the indebtedness of the bank created by the deposit of said funds in said account, certain of the assets of said bank, consisting of various and sundry bonds of the aggregate par value of, to wit, $791,000, a more detailed description and list of which is hereinafter set forth, marked Exhibit C–2, attached hereto and made a part hereof by this reference.

Plaintiff avers that there was no authority or capacity in said Commercial National Bank to pledge said assets as aforesaid as security for the debt created incident to said deposits of said Secretary of War, and that said bonds thereupon became a trust and were so held as such by the Secretary of War and his subordinate officer, the General Purchasing Officer and Chief of the Washington Office, the Panama Canal, for the benefit of said bank, its depositors, creditors, and stockholders.

Plaintiff further avers that after the suspension of said Bank and on, to wit, June 16, 1933, the Secretary of War directed Arthur L. Flint, General Purchasing Officer and Chief of Washington Office, The Panama Canal, to take over said bonds, as is evidenced by a copy of a certain letter dated June 16, 1933, which is attached hereto, marked Exhibit C–3 and made a part hereof by this reference. Plaintiff further avers that, acting under mistake of law, he acceded to the taking over of said bonds. Plaintiff avers that said bonds became a trust, and were held as such by the defendant, the Secretary of War, and the General Purchasing Officer and Chief of the Washington Office, The Panama Canal, for the benefit of said bank, its depositors, creditors and stockholders, and plaintiff claims the return of said bonds, or in the alternative, if sold, the proceeds derived from such sale, together with interest upon the proceeds at the legal rate from the date of the sale of said bonds to the date of recovery of said sum by plaintiff, and together with all income accrued upon said bonds and collected and retained by said defendants from and after, to wit, February 28, 1933, with interest at the legal rate on said income so collected to the date of recovery by plaintiff, subject to adjustment and deductions for the dividends hereinafter next indicated.

Plaintiff further avers that on, to wit, September 26, 1933, a first dividend of 20% of the amount of outstanding claims against said Commercial National Bank, and on, to wit, November 13, 1933, a second dividend of 30% upon the outstanding claims against said Commercial National Bank, were paid to the depositors and creditors of said bank who had duly established their claims against said bank as general creditors and accordingly plaintiff concedes that the trust funds hereinbefore set forth as recoverable by plaintiffs from said Secretary of War, and said General Purchasing Officer and Chief of the Washington Office, The Panama Canal, on behalf of the Government of the Canal Zone, are properly subject to adjustment and deduction in the sums representing the aforesaid dividends of 20% and 30%, respectively, paid to the general creditors of said Commercial National Bank.

13. The plaintiff avers that on, to wit, the 25th day of October, 1921, one Thomas W. Miller, Alien Property Custodian of the United States, opened a deposit account in said Commercial National Bank, and thereafter the title of said deposit account was changed to correspond to the change in personnel of the officers holding office as Alien Property Custodian of the United States, and from time to time thereafter various sums of money were deposited in said account, and at suspension and the closing of said bank the credit balance on deposit in said account, which then stood in the name of "Howard Sutherland, Alien Property Custodian, Special Account #2", amounted to the sum of, to wit, $162,298.93.

Plaintiff avers that on divers dates after the opening of the aforesaid deposit account and during the existence of said account, said Commercial National Bank unlawfully and illegally pledged with and to the Alien Property Custodian of the United States then holding office, as security for the repayment of the indebtedness of the bank created by the deposit of funds in said account, certain of the assets of said bank, consisting of various and sundry bonds of the par value of, to wit, $407,000, a more detailed description and list of which is hereinafter set forth in Exhibit D–1, hereto attached and made a part hereof by this reference.

Plaintiff avers that there was no authority or capacity in said Commercial National Bank to pledge said assets as aforesaid as security for the debts created incident to said deposits of the Alien Property Custodian, that said bonds thereupon became a trust, and were so held by the Alien Property Custodian for the benefit of said bank, its depositors, creditors and stockholders. Plaintiff avers that from time to time subsequent to the suspension of the bank, a portion of said collateral was sold by the Alien Property Custodian of the United States, as is shown in a schedule attached hereto and marked Exhibit D–2, and made a part hereof by this reference,
13 the total proceeds derived from said sales, including interest coupons collected, amounting to the sum of, to wit, $169,037.69, and said proceeds were applied by the Alien Property Custodian toward the payment of the credit balance on deposit in said Account of the Alien Property Custodian at the suspension of the Commercial National Bank, in the sum of, to wit, $162,298.93, and the unsold portion of said collateral was thereupon returned by said Alien Property Custodian to plaintiff as receiver of said bank, together with excess cash proceeds derived from the sale of said securities in the sum of, to wit, $6,738.76.

Plaintiff avers that the action of said Alien Property Custodian in selling said collateral as aforesaid was illegal, without authority of law, and that the proceeds of said sale became charged with, and constituted a trust for the benefit of the depositors and creditors and stockholders of said bank, and as such are recoverable by plaintiff from the defendant herein, Homer S. Cummings, Attorney General of the United States, as Successor in interest to the Alien Property Custodian of the United States, under and through an Executive Order of the President of the United States dated, to wit, May 1, 1934, numbered 6694, which order became effective on, to wit, July 1, 1934, together with interest on said sum of, to wit, $162,298.93, at the legal rate from the date of the sale of said collateral as aforesaid to the date of the recovery of said sums by plaintiff, subject to adjustment and deductions for the dividends hereinafter next indicated.

Plaintiff avers further that on, to wit, September 26, 1933, a first dividend of 20% of the amount of outstanding claims against said Commercial National Bank, and on, to wit, November 13, 1933, a second dividend of 30% upon the outstanding claims against
14 said Commercial National Bank, were paid to the depositors and creditors of said bank who had duly established their claims against said bank as general creditors, and accordingly plaintiff concedes that the trust fund hereinbefore set forth as recoverable by plaintiff from said Homer S. Cummings, Attorney General of the United States, as Successor in interest to the Alien Property Custodian of the United States, is properly subject to adjustment and

deduction in the sums representing the aforesaid dividends of 20% and 30%, respectively, paid to the general creditors of said Commercial National Bank.

14. The plaintiff avers that on, to wit, January 4, 1923, the then Secretary of War, purporting to act under authority of Section 625 of the Revised Administrative Code of 1917 of the Philippine Islands, designated the Commercial National Bank as a depositary bank in the United States for funds of the Government of the Philippine Islands, and approved, as Secretary of War, a bond given by said Commercial National Bank to the Government of the Philippine Islands providing for and covering the deposit of funds by the Government of the Philippine Islands in said Commercial National Bank, a copy of said bond being annexed hereto, marked Exhibit E–1, and made a part hereof by this reference. Plaintiff avers that under said contract deposits were made from time to time by the Government of the Philippine Islands in said bank and placed to the credit of said Government in an account captioned "Treasurer of Philippine Islands, Treasury Certificate Fund Account," and at the suspension and closing of said bank the credit balance on deposit in said account amounted to the sum of, to-wit, $1,003,602.74.

Plaintiff avers that on divers dates after the opening of the aforesaid deposit account and during the existence of said account said Commercial National Bank unlawfully and illegally pledged with and to the Secretary of War, through and by the then Chief of
15 the Bureau of Insular Affairs, as security for the repayment of the indebtedness of the bank created by the deposit of said funds in said accounts, certain of the assets of the bank, consisting of various and sundry bonds of the par value of, to-wit, $1,077,000, a more detailed description and list of which is hereinafter set forth in Exhibit E–2, hereto attached and made a part hereof by this reference.

Plaintiff avers that there was no authority or capacity in said Commercial National Bank to pledge said assets as aforesaid as security for the debts created incident to said deposits of said Government of the Philippine Islands, and that said bonds thereupon became a trust, and were so held as such by the Secretary of War and the Chief of Bureau of Insular Affairs, and their successors in office, for the benefit of said bank, its depositors, creditors and stockholders.

Plaintiff avers that on, to-wit, March 1 and 2, 1933, as evidenced by the affidavit of Edward A. Stockton, Jr., marked Exhibit E–3, attached hereto and made a part hereof by this reference, the collateral theretofore illegally pledged as aforesaid was sold for the sum of, to-wit, $997,448.33, a schedule of the bonds so sold and the prices obtained therefor being more fully set forth in Exhibit E–4, hereto attached and made a part hereof by this reference. Plaintiff avers that said sales as aforesaid were made by Patrick J. Hurley, then Secretary of War, acting through and by the then Chief of Bureau of Insular Affairs of the War Department, and plaintiff avers that the action of said Secretary of War and said Chief of Bureau of Insular Affairs in selling said collateral was illegal, and without authority of law, and that the proceeds of said sales became charged with, and constituted, a trust for the benefit of the depositors, cred-

itors, and stockholders of said bank, and as such are recoverable by plaintiff from the Secretary of War and the Chief of the
16 Bureau of Insular Affairs of the War Department, together with interest on said sum of, to wit, $997,448.33, at the legal rate from the date of said sales to the date of the recovery of said sums by plaintiff, subject to adjustment and deductions for the dividends hereinafter indicated. Plaintiff further avers that after the suspension of said bank and on, to wit, November 14, 1933, plaintiff, acting under mistake of law, illegally paid Creed F. Cox, Chief of the Bureau of Insular Affairs, acting for the Treasurer of the Philippine Islands, as is shown by Exhibit E-5, attached hereto and made a part hereof by this reference, the sum of, to wit, $6,154.41, and plaintiff avers that said illegal payment constituted a trust fund for the benefit of the depositors, creditors, and stockholders of said bank, and as such is recoverable by plaintiff from said Creed F. Cox, Chief of the Bureau of Insular Affairs, and the Secretary of War, together with the interest on said sum of, to wit, $6,154.41, from November 14, 1933, at the legal rate to the date of recovery of said sum by plaintiff, subject to adjustment and deductions for the dividends hereinafter indicated.

The plaintiff further avers that C. F. Brown is the Disbursing Agent of the Philippine Revenue, Bureau of Insular Affairs, War Department, and as such Disbursing Agent has in his custody and under his control, moneys of the Philippine Islands, and is the Chief Disbursing Agent of Philippine funds in the District of Columbia, and said defendant is sued in his official capacity as Disbursing Agent of funds of the Government of the Philippine Islands, from which the Court may direct the payment of any moneys found due this plaintiff.

Plaintiff further avers that on, to wit, September 26, 1933, a first dividend of 20% of the amount of outstanding claims against said Commercial National Bank, and on, to wit, November 13, 1933,
17 a second dividend of 30% upon the outstanding claims against said Commercial National Bank, were paid to the depositors and creditors of said bank who had duly established their claims against said bank as general creditors, and accordingly plaintiff concedes that the trust funds hereinbefore set forth as recoverable by plaintiff from said Secretary of War, Chief of Bureau of Insular Affairs, and Disbursing Agent of Philippine Revenue, Bureau of Insular Affairs, or their successors in office, are properly subject to adjustment and deduction in the sums representing the aforesaid dividends of 20% and 30%, respectively, paid to the general creditors of said Commercial National Bank.

15. The plaintiff further avers that on to wit the 1st day of March 1933, the date the said bonds were sold, as heretofore described in paragraph 8 of the bill, the proceeds from the sale of said bonds were transmitted to and placed with the Chase National Bank of the City of New York, and thereafter said proceeds, together with other moneys paid under mistake of law to George H. Dern and Creed Fulton Cox and transmitted to the Chase National Bank of the City of New York, or part thereof, were transmitted to and placed with Henry Morgenthau, Jr.; and plaintiff further avers, by reason of the facts set forth in said bill of complaint and this amendment, that said proceeds derived from the sale of said securities were funds

of the plaintiff herein, as were the moneys erroneously paid said George H. Dern and Creed Fulton Cox and transmitted to the Chase National Bank of the City of New York and to said Henry Morgenthau, Jr., and by reason of the foregoing said Henry Morgenthau, Jr., received said proceeds and now holds them in trust for plaintiff.

16. Plaintiff further avers that the funds claimed by him in the bill of complaint, as hereinbefore set forth, are not moneys of the United States, are not part of the revenues of the United States, are
18 not subject to the control of the Secretary of the Treasury of the United States in his official capacity as Secretary of the Treasury with respect to moneys of the United States, and said moneys hereinbefore claimed from the defendant Inland Waterways Corporation are not moneys of said defendant Inland Waterways Corporation, and said moneys hereinbefore claimed from defendant United States Shipping Board Merchant Fleet Corporation are not moneys of said defendant United States Shipping Board Merchant Fleet Corporation, and said moneys hereinbefore claimed from George H. Dern and Arthur L. Flint, in connection with their official position relating to the Panama Canal, are not moneys of the Panama Canal, and said moneys hereinbefore claimed from the defendant Homer S. Cummings are not moneys of the United States, and said moneys claimed from George H. Dern, Creed Fulton Cox, C. F. Brown, and Henry Morgenthau, Jr., are not moneys of the Government of the Philippine Islands, and all of said moneys claimed by plaintiff in said bill of complaint are part of the trust assets of the insolvent Commercial National Bank of Washington, D. C., belonging to the general creditors of the bank, out of which trust assets all creditors are entitled to be paid ratably. The plaintiff further avers that said funds hereinbefore claimed by plaintiff in the bill of complaint have not been covered into the Treasury of the United States or the Treasury of any state, territory, or other government. Plaintiff further avers that the Commercial National Bank of Washington, D. C., was never designated by the Secretary of the Treasury, under regulations prescribed by said Secretary, as a depository of moneys of the Inland Waterways Corporation or of the United States Shipping Board Merchant Fleet Corporation or of the Government of the Canal Zone or of the Government of the Philippine Islands or of the Alien Property Custodian, nor did the Secretary of the Treasury exact from said Commercial National Bank of Washington, D. C., the pledges of securities which are the subject matter of this suit.

19 Wherefore, the premises considered, plaintiff prays:

1. That a writ of subpoena issue out of this Honorable Court to the defendants named herein, and each of them, requiring them to appear and to answer the exigencies of this Bill of Complaint.

2. That this Honorable Court adjudge and determine that the defendant Inland Waterways Corporation is indebted to, and should be required to account to plaintiff in the full sum of $245,000.00 as a trust fund, said amount representing trust funds and moneys of the insolvent Commercial National Bank preferentially paid to and received by said defendant as an illegal, erroneous, and unlawful payment to it of said sum, as a partial redemption by plaintiff, acting under a mistake of law, of collateral pledged, as hereinabove set forth, to secure deposits of said defendant Inland Waterways Corporation,

together with interest on said sum at the legal rate, from, to wit, April 20, 1933 (the date of said illegal preference), to date of payment subject to credits and dividend adjustments as set forth in said Bill of Complaint.

3. That this Honorable Court adjudge and determine that the defendant Inland Waterways Corporation is indebted to, and should be required to account to plaintiff in the full sum of $261,215.63 as a trust fund, said amount representing proceeds from the sale of collateral security of the insolvent Commercial National Bank, illegally pledged to and received by said defendant as an illegal, erroneous, and unlawful pledge of said assets, as hereinabove set forth, to secure deposits of said defendant Inland Waterways Corporation, together with interest on said sum at the legal rate, from, to wit, April 20, 1933 (the date of the sale of said securities), to date of payment to plaintiff, subject to credits and dividend adjustments as set forth in said Bill of Complaint.

4. That the funds specifically referred to in the Bill of
20 Complaint, and in Prayers Nos. 2 and 3 above, as being recoverable as trust funds from said defendant Inland Waterways Corporation, be credited with and made subject to adjustment and deduction for such sums as are represented by dividends of 20% and 30% of the amount of outstanding claims of said defendant against the Commercial National Bank, on which claims said defendant is entitled to be paid said dividends with depositors and other general creditors as of September 26, 1933, and November 13, 1933, respectively, together with a further deduction and adjustment for the sum of, to wit, $21,804.16, returned by said defendant to plaintiff as in said Bill of Complaint set forth.

5. That this Honorable Court adjudge and determine that the defendant United States Shipping Board Merchant Fleet Corporation is indebted to, and should be required to account to plaintiff, in the full sum of $281,695.31 as a trust fund, said amount representing trust funds and moneys of the insolvent Commercial National Bank preferentially paid to and received by said defendant as illegal, erroneous, and unlawful payment to it of said sum, as a partial redemption by plaintiff, acting under a mistake of law, of collateral pledged, as hereinabove set forth, to secure deposits of said defendant United States Shipping Board Merchant Fleet Corporation, together with interest on said sum, at the legal rate, from, to wit, April 13, 1933, and April 18, 1933 (the dates of said illegal preferences), to date of payment to plaintiff, subject to credits and dividend adjustments as set forth in said Bill of Complaint.

6. That this Honorable Court adjudge and determine that the defendant United States Shipping Board Merchant Fleet Corporation is indebted to, and should be required to account to plaintiff in the full sum of $5,515.49 as a trust fund, said amount representing collections by said defendant from collateral illegally pledged, as in said Bill of Complaint set forth, and illegally retained by
21 said defendant, together with interest on said sum, at the legal rate from the date of collection of said sum by said defendant to date of payment thereof to plaintiff, subject to credits and dividend adjustments, as set forth in said Bill of Complaint.

7. That this Honorable Court adjudge and determine that the defendant United States Shipping Board Merchant Fleet Corpora-

tion is indebted to, and should be required to account to plaintiff in the full sum of $125,929.69 as a trust fund, said amount representing proceeds from the sale of collateral security of the insolvent Commercial National Bank, illegally pledged to and received by said defendant as an illegal, erroneous and unlawful pledge of said assets, as hereinabove set forth, to secure deposits of said defendant United States Shipping Board Merchant Fleet Corporation, together with interest on said sum at the legal rate, from, to wit, May 8, 1933 and May 9, 1933 (the dates of the sales of said securities), to date of payment to plaintiff, subject to credits and divided adjustments as set forth in said Bill of Complaint.

8. That the funds specifically referred to in the Bill of Complaint, and in Prayers Nos. 5, 6, and 7 above, as being recoverable as trust funds from said defendant United States Shipping Board Merchant Fleet Corporation, be credited with and made subject to adjustment and deduction for such sums as are represented by dividends of 20% and 30% of the amount of outstanding claims of said defendant United States Shipping Board Merchant Fleet Corporation against the Commercial National Bank on which claims said defendant is entitled to be paid dividends with depositors and other general creditors as of September 26, 1933 and November 13, 1933, respectively, together with a further deduction and adjustment for the sum of, to wit, $4,270.17, returned by said defendant to plaintiff as in said Bill of Complaint set forth.

22 9. That the defendants George H. Dern and Arthur L. Flint, as Secretary of War and as General Purchasing Officer and Chief of Washington Office, respectively, or their successor or successors in office, and The Panama Canal, be adjudged and decreed by this Honorable Court to be indebted to, and be required to account to plaintiff for the bonds of the par value of $791,000.00 set out in Exhibit "C-2", attached to the Bill of Complaint, or the proceeds thereof if said bonds have been sold, as property impressed with a trust or as trust funds and moneys of the insolvent Commercial National Bank illegally pledged to and received by said defendants, and each of them, as set forth in said Bill, to secure deposits of said defendants, together with the income received by the defendants on said property from the said illegal pledge of said bonds to said defendants, or with interest at the legal rate on the proceeds of such bonds, if sold, from the date of sale thereof to the date of payment to plaintiff, subject to credits and dividend adjustments, as set forth in said Bill of Complaint.

10. That a sum representing the market value of said bonds on the date of the illegal pledging thereof, as set forth in the Bill of Complaint, or the proceeds from the sale of said bonds, referred to in Prayer No. 9 above, as being recoverable as trust property or trust funds from said defendants George H. Dern and Arthur L. Flint, as Secretary of War and as General Purchasing Officer and Chief of Washington Office, The Panama Canal, respectively, be credited with and made subject to adjustments and deduction for such sums as are represented by dividends of 20% and 30% of the amount of outstanding claims of said defendants against the Commercial Na-

tional Bank, on which claims said defendants are entitled to be paid dividends with depositors and other general creditors as of
23 September 26, 1933, and November 13, 1933, respectively.

11. That this Honorable Court adjudge and determine that the defendant, Homer S. Cummings, as the Attorney General of the United States, and as successor in interest to the Alien Property Custodian, or their successors in office, be required to account to plaintiff for the full sum of $162,298.93 as a trust fund, said amount representing proceeds from the sale of collateral security of the insolvent Commercial National Bank, illegally pledged to and received by said defendant or his predecessor or predecessors in office as an illegal, erroneous and unlawful pledge of said assets, as hereinabove set forth, to secure deposits of the Alien Property Custodian of the United States, together with interest on said sum of $162,298.93 at the legal rate, from the date of sale to the date of payment to plaintiff, subject to credits and dividend adjustments as set forth in said Bill of Complaint.

12. That George H. Dern, as Secretary of War, and Creed Fulton Cox, as Chief of the Bureau of Insular Affairs, War Department, and C. F. Brown, as Disbursing Agent of the Philippine Revenue, be adjudged and determined to be indebted to and should be required to account to plaintiff in the full sum of $997,448.33, said amount representing proceeds from the sale of collateral security of the insolvent Commercial National Bank, illegally pledged to and received by said defendants, or their predecessor or predecessors in office, as an illegal, erroneous and unlawful pledge of said assets, as hereinbefore set forth, to secure deposits of said defendants in said bank, together with interest on said sum at the legal rate, from, to wit, March 1st and March 2, 1933 (the dates of the sales of said securities), to date of payment to plaintiff, subject to credits and dividend adjustments as set forth in said Bill of Complaint.

24 13. That George H. Dern, as Secretary of War, and Creed Fulton Cox, as Chief of the Bureau of Insular Affairs, War Department, be adjuded and decreed to be indebted to, and should be required to account to plaintiff in the full sum of $6,154.41 as a trust fund, said amount representing trust funds and moneys of the insolvent Commercial National Bank preferentially paid to and received by said defendants, and each of them, or their predecessor or predecessors in office, as an illegal, erroneous, and unlawful payment to them of said sum, acting under a mistake of law, as in said Bill of Complaint set forth, together with interest on said sum at the legal rate from November 14, 1933 (the date of said illegal preference), to date of payment to plaintiff, subject to credits and dividend adjustments as set forth in said Bill of Complaint.

14. That the defendant C. F. Brown, as Disbursing Agent of the Philippine Revenue, Bureau of Insular Affairs, War Department, or his successor in office, be required to pay and satisfy any judgment or decree entered by this Court in respect to funds of the Government of the Philippine Islands from such moneys as said C. F. Brown, or his successor in office, may have under their control or in their possession.

14. (a) That the defendant, Henry Morgenthau, Jr., be required to account for and pay over to the plaintiff, as a trust fund for the benefit of the depositors and other creditors and stockholders of the insolvent Commercial National Bank of Washington, so much of the

proceeds from the sale of the bonds described in paragraph numbered 14 of the bill of complaint that have been transmitted to said Henry Morgenthau, Jr., from the Chase National Bank of the City of New York, together with such other moneys of plaintiff erroneously paid under mistake of law to George H. Dern and Creed Fulton Cox
25 and thereafter transmitted by them to the Chase National Bank of the City of New York, and by it transmitted to said Henry Morgenthau, Jr.

14. (b) That the Court grant such discovery and accounting as the nature of the case may require in order to grant the plaintiff the relief herein prayed.

15. And for such other and further relief as to this Honorable Court may seem just and proper.

ROBERT C. BALDWIN, *Receiver,*
Commercial National Bank.

SHERLEY, FAUST & WILSON,
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.
GEORGE P. BARSE,
Attorney for Comptroller of the Currency,
of Counsel.

DISTRICT OF COLUMBIA, *ss:*

R. C. Baldwin, being first duly sworn, on oath, deposes and says that he has read the above amended Bill of Complaint by him subscribed, and knows the contents thereof; that the matters and things therein set forth are true according to his best knowledge and belief.

ROBERT C. BALDWIN, *Receiver,*
Commercial National Bank.

Subscribed and sworn to before me this 3d day of June, 1936.

[SEAL] JOSEPHINE L. HAYES, *Notary Public,*
District of Columbia.

26 *"Exhibit A"*

Description and list of various and sundry bonds pledged by the Commercial National Bank of Washington, D. C., to Inland Water Ways Corporation:

Par value	Description
$25,000.00	United States Treasury 3¾% Bonds of 3/15/46–56.
$245,000.00	United States Fourth 4¼% Liberty Loan Bonds of 10/15/33–38.

"Exhibit B–1"

Know all men by these presents:

That whereas the Commercial National Bank of Washington, a banking corporation duly organized and doing business under the laws of the United States and having its office and principal place of business at Washington, in the District of Columbia, has on deposit with it funds of the United States Shipping Board Merchant Fleet Corporation; and

Whereas the United States Shipping Board Merchant Fleet Corporation has requested security for such funds on deposit and such funds as may be hereafter from time to time deposited by it with the said The Commercial National Bank of Washington; and

Whereas the said United States Shipping Board Merchant Fleet Corporation has consented to the deposit of first deed of trust notes as security for the prompt payment of the said funds so on deposit and to be deposited:

Now, therefore, in consideration of the said funds now on deposit and to be hereafter deposited, or any part thereof, by
27 the United States Shipping Board Merchant Fleet Corporation, the said The Commercial National Bank of Washington, said depositary, has this day delivered to the United States Shipping Board Merchant Fleet Corporation the following described securities:

(1) One note for $100,000.00 payable three years after date with interest at the rate of 6% per annum, said interest being payable semi-annually, and secured by a first deed of trust on Lot Eighty-four (84) in Hurley Motor Company's Subdivision of Lots in Square Two hundred and nine (209), in the City of Washington, District of Columbia, as per plat recorded in Liber 65 folio 7 of the records of the office of the Surveyor of the District of Columbia.

(2) One note for $75,000.00 payable three years after date with interest at the rate of 6% per annum, said interest being payable semi-annually, and secured by a first deed of trust on Lot numbered One (1) in Block numbered Forty (40) in the Subdivision known as the "North Grounds of Columbia University", in the City of Washington, District of Columbia, as per plat recorded in the Liber Governor Shepherd folio 149 of the Records of the Office of the Surveyor of the District of Columbia;—said block numbered Forty (40) being now known for purposes of assessment and taxation as Square numbered Twenty-six hundred and Sixty-eight (2668);

(3) Promissory notes aggregating $1,683,377.08, payable five years after date, with interest, at the rate of 5% per annum, said interest payable semi-annually, and secured by a first deed of trust on Lot twenty-three (23) in the Combination of lots in Square Two Hundred and Twenty-three (223), made by the Commercial National Bank of Washington, as per plat recorded in Liber 58 of folio 69 of the Records of the office of the Surveyor of the District of Columbia; which said securities, together with any substitutes therefor which may be acceptable to the United States Shipping
28 Board Merchant Fleet Corporation, are hereby pledged as collateral security for the prompt payment on demand in writing of any and all funds so deposited or hereafter deposited to the credit of the United States Shipping Board Merchant Fleet Corporation, and the said The Commercial National Bank of Washington further agrees that the failure to so pay such funds or any part thereof on demand in writing, shall be evidence of default, and upon such demand and failure to pay, the said United States Shipping Board Merchant Fleet Corporation, its Treasurer, or such other person as may by it be designated, is authorized to sell the above-described securities at either public or private sale, after thirty days notice in writing of its intention to so sell, stating the time and place of such sale, with the right in said United States Shipping Board Merchant Fleet Corporation at any such public sale to purchase all or part of said securities free and discharged of any right of redemption, and to apply the proceeds of such sale, after deducting all necessary expenses of such sale, to the payment of funds on deposit in the said The Commercial National Bank of Washington to the credit of the United States Shipping Board Merchant Fleet

Corporation, any surplus remaining from the proceeds of the sale of such securities after such payment has been made, to be paid to the said The Commercial National Bank of Washington.

Upon the payment and return on demand in writing of all funds on deposit in said The Commercial National Bank of Washington to the credit of the United States Shipping Board Merchant Fleet Corporation by the said The Commercial National Bank of Washington, the said United States Shipping Board Merchant Fleet Corporation agrees to and will return upon demand in writing by the said The Commercial National Bank of Washington, all the aforesaid securities, including substitutes, referred to herein.

The right is hereby reserved on behalf of the said The Commercial National Bank of Washington to pay or return in full such
29 deposits of the United States Shipping Board Merchant Fleet Corporation at any time and upon so doing to receive from said United States Shipping Board Merchant Fleet Corporation the securities deposited under the terms hereof.

In witness whereof, the said The Commercial National Bank of Washington has caused this agreement, and the duplicate thereof, to be signed in its corporate name by Wade H. Cooper, its president, and its corporate seal to be hereunto affixed and attested by Walter J. Harrison, its Secretary, this 19th day of November, 1931.

THE COMMERCIAL NATIONAL BANK OF WASHINGTON,
By WADE H. COOPER, *President.*

Attest:
WALTER J. HARRISON, *Secretary.*

O. K.
R. D. Q.

Received of The Commercial National Bank of Washington, D. C., this — day of November, 1931, the above-described securities under the terms and conditions above mentioned.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION,
By HEBER M. WELLS, *Treasurer.*

Approved:
CHAUNCEY G. PARKER.

Endorsed:
U. S. S. B. M. F. C.

30 "*Exhibit B-2*"

Description and list of various and sundry bonds pledged by the Commercial National Bank of Washington, D. C. to United States Shipping Board Merchant Fleet Corporation.

Par value	*Description*
$100,000 U. S. Treas	3¼% Bonds of 6/15/46-49.
75,000 U. S. Treas	3⅜% Bonds of 3/15/43.
25,000 U. S. Treas	3¼% Bonds of 3/15/46-56.
200,000 4th Liberty Loan	4¼% Bonds of 10/15/33-38.

"*Exhibit C-1*"

This agreement, made at Washington, District of Columbia, this 11th day of May, 1910, between the Secretary of War, the executive officer of the United States charged by the President with supervision and control over the governmental affairs of the Canal Zone, and the

Commercial National Bank, of Washington, District of Columbia, a corporation organized and existing under the banking laws of the United States, hereinafter called the Bank, in renewal and amendatory of an agreement entered into by and between the Government of the Canal Zone and the Commercial National Bank, under date of January 19, 1909, witnesseth:

ARTICLE I. The administrative officers of the Canal Zone have collected and received, and will continue to collect and receive, hold, deposit, disburse, and expend, municipal, administrative district and various other funds, deposits, postal funds, and other obligations, securities, funds and moneys which may come into their custody, and the Secretary of War desires to secure a safe and sure place for the deposit, custody, safe-keeping and disbursement of said moneys and funds, and also an expeditious and effective method of auditing, inspecting, examining, transferring and disbursing the said moneys and funds.

ARTICLE II. The Bank guarantees that it has a suitable place therefor, and is prepared to undertake the custody and safe-keeping of and accounting for said moneys and funds, which said suitable place for said services is the banking house or place of business of the said Commercial National Bank.

ARTICLE III. There was on deposit with the Bank on March 1, 1910, under the original agreement of January 19, 1909, One Million Two Hundred and Fifty-four Thousand, Seven Hundred and Fifty-four Dollars and Ninety-two Cents ($1,254,754.92), and there will be left on deposit with said Bank hereafter such part of the moneys and funds covered by this agreement as may be found convenient or necessary. The deposits, if any are made, will be made in such amounts and at such times as may be practicable and convenient to the Treasurer of the Canal Zone or to other officers or agents duly authorized by the Secretary of War.

ARTICLE IV. The Bank, in consideration of the benefits it will derive from being made such place of deposit, the mutual entering into of the agreement herein set forth, and the deposit with it of such moneys and funds, undertakes and agrees to receive and safely keep and disburse and properly account for all moneys and funds deposited with and turned over to it by the Treasurer of the Canal Zone or by other agents, or representatives of the Secretary of War.

ARTICLE V. The Bank undertakes and agrees to pay on all moneys and funds covered by this agreement interest at the rate of three (3) per centum per annum from March 1, 1910, to a date not later than July 1, 1910, on which the deposit shall be reduced to Five Hundred Thousand Dollars ($500,000.00), more or less, computed on the minimum balance for each month or part of month, as follows:

Interest for March and April shall be computed on the minimum monthly balance to the credit of the account during each of those months.

Interest on and after May 1st shall be computed, for the first period, on the minimum balance between May 1st and the date the first check transferring part of the deposit to The Riggs National Bank, of Washington, D. C., is paid; for the second period, on the minimum balance between the date the first check transferring part of the deposit to The Riggs National Bank is paid and the date the second check is paid; for the third period, on the minimum balance be-

tween the date the second check is paid and the date the third check is paid; for the fourth period, on the minimum balance between the date the third check is paid and the date the fourth check is paid, which shall be on or before July 1, 1910.

From July 1, 1910, or from the date the fourth check transferring the balance of the deposit above Five Hundred Thousand Dollars ($500,000.00) more or less, to The Riggs National Bank has been paid by the Bank, interest shall be due and payable at the rate of two (2) per centum per annum, to be computed on the minimum balance to the credit of the account during each calendar month and any part of month occurring after said fourth check is paid. Interest shall be payable semi-annually and shall be placed to the credit of the account on September 1st and March 1st of each year during the continuance of this agreement. Should this agreement be terminated and the account closed during any semi-annual period, interest shall be due and payable to and on the date of such termination of the agreement and closing of the account, interest for a fractional part of a month being payable on the minimum balance to the credit of the account during such fractional part of a month.

33 ARTICLE VI. The Bank agrees to accept, and pay, without charge or discount, all bills, drafts and checks drawn upon it by the Secretary of War, the Treasurer of the Canal Zone, or by other officers or persons duly authorized for that purpose, when said bills, drafts or checks are properly presented or come to it for acceptance or payment, and drawn against said moneys and funds so deposited, and will promptly account for all moneys and funds received and pay over the balance at any time remaining in its hands of all and any moneys and funds so received by it to the said Treasurer of the Canal Zone, or other officers or persons duly authorized for the purpose by the Secretary of War, or by his succeeding lawfully designated governing authority of the Canal Zone, when called upon so to do.

ARTICLE VII. The Bank on the first day of each month and at such other times as it may be requested to do so shall render a statement of deposits and payments covering the preceding month, or part of month, to the Treasurer of the Canal Zone, or to such other officers or persons as shall be duly authorized for that purpose, and its books of account shall at all times show the amount of moneys and funds in the keeping of said Bank deposited under this agreement.

ARTICLE VIII. This agreement shall continue in force until terminated on written notice which may be given at any time by either party to the other. Provided, however, that this agreement shall be immediately terminated should Congress by law direct its termination or give instructions concerning the funds covered by this contract inconsistent with the terms hereof. In case this contract is terminated the Bank shall immediately pay to the Secretary of War, the Treasurer of the Canal Zone, or other officers or agents duly authorized for the purpose, any balance remaining to the credit of the account.

34 ARTICLE IX. As security for the safe-keeping and prompt payment of the moneys and funds deposited under this agreement and the faithful performances thereof, the Bank has deposited

with Captain P. C. Boggs, Corps of Engineers, U. S. A., General Purchasing Officer of the Isthmian Canal Commission, bonds of the par value of One Million Two Hundred and Ninety-four Thousand Dollars ($1,294,000.00), said bonds being now deposited in the vaults of the American Security and Trust Company, under an agreement dated February 10, 1909, and renewed by letter of February 9, 1910, copies of which are attached hereto, and, after a par of the bonds are withdrawn, will, if practicable, be deposited in a smaller safe in the vaults of said Trust Company under a continuing agreement to be substituted therefor, which agreement, when executed, shall become a part of this contract. The Bank agrees to maintain at all times during the continuance of this agreement the same or other acceptable bonds in such amount that the moneys and funds deposited under this agreement will at all times be fully secured by bonds of the following classes and at the values specified:

United States, Philippine, Porto Rico and District of Columbia bonds will be accepted at par.

Bonds of the Hawaiian Territory at ninety (90) per cent, and, if otherwise satisfactory to the Secretary of War or his representative, Philippine Railway Company bonds and those of States, municipalities and high-grade railroads such as are legal investments for savings banks in the States of New York, Massachusetts, Connecticut, or New Jersey, at ninety (90) per cent of their market value, but not exceeding ninety (90) per cent of their par value.

The Bank shall have the right, as deposits are withdrawn to withdraw its bonds correspondingly, and at any time to substitute other bonds acceptable as above of equal market value, for the bonds then on deposit.

In the absence or disability of Captain Boggs, his representative or successor as custodian of said bonds, shall be designated by or with the approval of the Secretary of War.

ARTICLE X. The Bank agrees that the said bonds are now and will hereafter be deposited as security for the safe-keeping and prompt payment of the moneys and funds deposited with it, and for the faithful performance of all provisions of this agreement, and in the event that the Bank fails to make prompt payment or fails to safely keep the moneys and funds deposited with it, or otherwise fails to faithfully perform all the provisions of this agreement, it is agreed by the bank that said bonds shall become the property of the Secretary of War and may be either retained by him or may be sold, transferred and conveyed, in whole or in part, by the said Secretary of War or his duly authorized agent, as his absolute property, and the proceeds realized from the said sale or sales shall be applied by the said Secretary of War or his agent, to the liquidation of any amount due by the bank under this agreement, any residue thereof after said liquidation to be delivered to the Bank.

ARTICLE XI. All or any acts which may be performed, and all or any orders which may be given, by the Secretary of War under this agreement, may be performed or be given by the Acting Secretary of War with the same force and effect as if they were performed or given by the Secretary of War himself.

In witness whereof, the Secretary of War has signed this agreement in triplicate, and the Bank has caused it to be signed likewise
36 in triplicate by its proper officers and its corporate seal affixed thereto the day and year first above written.

In the presence of:

(Signed) W. R. PEDIGO.

(Signed) J. M. DICKINSON,
Secretary of War.

COMMERCIAL NATIONAL BANK,

[SEAL] By (Signed) A. G. CLAPHAM,
as its Vice-President.

Attest:

(Signed) JOHN POOLE,
as its Secretary

"Exhibit C–2"

Description and list of various and sundry bonds pledged by commercial National Bank of Washington, D. C. to A. L. Flint, General Purchasing Officer and Chief of Washington Office the Panama Canal.

Par value	Description
$30,000.00	Federal Farm Loan 4¼% Bonds of July 1, 1936–56.
185,000.00	Federal Farm Loan 4½% Bonds of Jan. 1, 1953.
10,000.00	Great Northern Ry. Co., General 7's of July 1, 1936.
25,000.00	Chicago & Northwestern Ry., 15 year 6½% Bonds of March 1, 1936.
30,000.00	Buffalo, Rochester & Pittsburgh 5's of Sept. 1, 1937.
25,000.00	Colorado & Southern Ry. 4½% of May 1, 1935.
25,000.00	Lake Erie & Western Ry., First 5% of Jan. 1, 1937.
7,000.00	Duluth & Iron Range Ry. First 5's of Oct. 1, 1937.
5,000.00	Ohio River R. R. Co., General 5's of April 1, 1937.
35,000.00	Federal Farm Loan Bonds, 4½% of Jan. 1, 1935–55.
5,000.00	Federal Farm Loan Bonds, 4¾% of July 1, 1934–54.
20,000.00	Federal Farm Loan Bonds, 4¼% of May 1, 1937–57.
13,000.00	New York, Philadelphia & Norfolk, R. R., 1st 4's of Jan. 1, 1939.
14,000.00	Long Island R. R. Co., General 4's of June 1, 1938.
40,000.00	Delaware & Hudson R. R. 5½'s of May 1, 1937.
37 5,000.00	Cleveland, Cinn. Chicago & St. Louis, Cairo Div. 4's of Jan. 1. 1939.
5,000.00	Cleveland, Cinn., Chicago & St. Louis (White Water Div.) 4's of July 1, 1940.
2,000.00	Cleveland, Cinn., Chicago & St. Louis, Springfield & Columbus Div., 1st 4's of Sept. 1, 1940.
40,000.00	Federal Farm Loan 4½'s of May 1, 1932–42.
$791,000.00	Total.

Exhibit "C–3"

WAR DEPARTMENT.
Washington, June 16, 1933.

MR. A. L. FLINT,
General Purchasing Officer and Chief of Office,
The Panama Canal, Washington, D. C.

DEAR MR. FLINT: As authorized by the terms of Article X of the contract entered into on May 11, 1910, by and between the Secretary of War and the Commercial National Bank, providing that "in the

event that the Bank fails to make prompt payment or fails to safely keep the moneys and funds deposited with it, or otherwise fails to faithfully perform all the provisions of this agreement, it is agreed by the Bank that said bonds" (the bonds deposited as security for the safe-keeping and prompt payment of Canal Zone funds deposited with the Bank) "shall become the property of the Secretary of War and may be either retained by him or may be sold, transferred and conveyed, in whole or in part, by the said Secretary of War or his duly authorized agent, as his absolute property * * *," you are hereby directed on my behalf to take over such bonds as the absolute property of the Canal Zone.

38 You are authorized to enter into an agreement with the Receiver of the Commercial National Bank as to the present market value of the bonds at which they will be taken over, which agreement, it is understood, will be subject to the approval of the Comptroller of the Currency.

Yours very truly,

(S) GEORGE H. DERN,
Secretary of War.

Exhibit "D-1"

Description and list of various and sundry bonds pledged by the Commercial National Bank of Washington, D. C., to the Alien Property Custodian of the United States.

Par value	Description
$33,000.00	Baltimore and Ohio Railroad, Toledo-Cincinnati Division First Lien 4's of 7/1/59.
50,000.00	Rio Grande & Western Railway First 4's of July 1, 1939.
25,000.00	St. Paul, Kansas City, Short Line Railroad, First Mortgage 4½'s of 2/1/41.
25,000.00	Chicago, Rock Island and Pacific Railway, Series A, 4½'s of September 1, 1952.
75,000.00	Kansas City, Fort Scott and Memphis Railway 4's of October 1, 1936.
25,000.00	New York, Central and Hudson River Debentures 4's of May 1, 1934.
80,000.00	Milwaukee and Northern Railway First Mortgage Extended 4½'s of June 1, 1934.
25,000.00	Denver and Rio Grande Railroad First Consolidated 4's of January 1, 1936.
25,000.00	Kansas City, Memphis and Birmingham Railway 5's of March 1, 1934.
20,000.00	City of Atlantic City, New Jersey, 5's of February 1, 1936.
5,000.00	New York, Chicago and St. Louis Railroad 5's, Series M of August 1, 1936.
9,000.00	Grand Rapids and Indiana Railroad Second 4's of October 1, 1936.
3,000.00	City of Toronto, Canada, 5's of October 1, 1935.
6,000.00	Cincinnati, Hamilton and Dayton Railway Second 4's of January 1, 1937.
5,000.00	Adirondack Railway Company First 4½'s of March 1, 1942.
25,000.00	United States Treasury 3¾% Bonds of March 15, 1936/46.
17,000.00	Pacific Railroad of Missouri, First Mortgage 4's of August 1, 1938.
4,000.00	Carolina, Clinchfield and Ohio Railway First Mortgage 5's of June 1, 1938.
$407,000.00	

39

Exhibit D 2

Description and list of pledged bonds sold by the Alien Property Custodian together with amounts derived from the sales and dates of sales:

Par value	Description	Proceeds derived from sale	Date
$1,000.00	Baltimore and Ohio Railroad, Toledo-Cincinnati Division, First Lien 4's of 7/1/59.	$493.06	April 5, 1933.
1,000.00	Baltimore and Ohio Railroad, Toledo-Cincinnati Division, First Lien 4's of 7/1/59.	483.72	April 12, 1933.
6,000.00	Baltimore and Ohio Railroad, Toledo-Cincinnati Division, First Lien 4's of 7/1/59.	3,057.34	March 27, 1933.
1,000.00	Baltimore and Ohio Railroad, Toledo-Cincinnati Division, First Lien 4's of 7/1/59.	470.17	April 25, 1933.
2,000.00	Baltimore and Ohio Railroad, Toledo-Cincinnati Division, First Lien 4's of 7/1/59.	940.33	April 25, 1933.
50,000.00	Rio Grande and Western Railway First 4's of July 1, 1939	24,508.34	April 25, 1933.
15,000.00	St. Paul, Kansas City, Short Line Railroad First Mortgage 4½'s of 2/1/41.	5,460.00	March 23, 1933.
8,000.00	St. Paul, Kansas City, Short Line Railroad First Mortgage 4½'s of 2/1/41.	2,913.01	March 24, 1933.
2,000.00	St. Paul, Kansas City, Short Line Railroad First Mortgage 4½'s of 2/1/41.	718.00	March 23, 1933.
25,000.00	Chicago, Rock Island and Pacific Railway, Series A, 4½'s of 9/1/52.	5,784.40	March 24, 1933.
5,000.00	Kansas City, Fort Scott & Memphis Railway 4's of October 1, 1936.	1,737.50	April 7, 1933.
4,000.00	Kansas City, Fort Scott & Memphis Railway 4's of October 1, 1936.	1,391.25	April 7, 1933.
13,000.00	Kansas City, Fort Scott & Memphis Railway 4's of October 1, 1936.	4,517.50	April 6, 1933.
21,000.00	Kansas City, Fort Scott & Memphis Railway 4's of October 1, 1936.	7,407.50	April 10, 1933.
21,000.00	Kansas City, Fort Scott & Memphis Railway 4's of October 1, 1936.	7,297.50	April 10, 1933.
11,000.00	Kansas City, Fort Scott & Memphis Railway 4's of October 1, 1936.	3,962.50	April 11, 1933.
8,000.00	New York, Central & Hudson River Debenture 4's of May 1, 1934.	5,204.00	April 13, 1933.
12,000.00	New York, Central & Hudson River Debenture 4's of May 1, 1934.	7,513.83	April 17, 1933.
5,000.00	New York, Central & Hudson River Debenture 4's of May 1, 1934.	3,130.28	April 18, 1933.
25,000.00	Denver & Rio Grande Railroad First Consolidated 4's of Jan. 1, 1936.	8,180.55	March 24, 1933.
5,000.00	Kansas City, Memphis & Birmingham Railway 5's of March 1, 1934.	2,340.97	April 12, 1933.
10,000.00	Kansas City, Memphis & Birmingham Railway 5's of March 1, 1934.	5,411.11	March 27, 1933.
10,000.00	Kansas City, Memphis & Birmingham Railway 5's of March 1, 1934.	4,869.44	April 3, 1933.
5,500.00	New York, Chicago & St. Louis Railroad 5's, Series M of August 1, 1936.	3,010.42	March 22, 1933.
9,000.00	Grand Rapids & Indiana Railroad Second 4's of October 1, 1936.	7,821.00	March 22, 1933.
3,000.00	City of Toronto, Canada, 5's of October 1, 1935	2,801.25	March 22, 1933.
6,000.00	Cincinnati, Hamilton & Dayton Railway Second 4's of January 1, 1937.	5,154.76	April 4, 1933.
25,000.00	United States Treasury 3¼% Bonds of March 15, 1956/46	25,734.38	March 20, 1933.
15,000.00	Pacific Railroad of Missouri, First Mortgage 4's of August 1, 1938.	11,095.83	April 6, 1933.
2,000.00	Pacific Railroad of Missouri, First Mortgage 4's of August 1, 1938.	1,666.78	March 24, 1933.
4,000.00	Carolina, Clinchfield & Ohio Railway First Mortgage 5's of June 1, 1938.	3,492.22	March 23, 1933
		168,568.94	
	Coupons collected	468.75	
		169,037.69	

40 *Exhibit E-1*

Know All Men by These Presents.

That the Commercial National Bank, Washington, D. C., a corporation existing under the laws of The District of Columbia, is held and firmly bound unto the Government of the Philippine Islands in the sum of One Million ($1,000,000) dollars, lawful money of the United States of America, for the payment of which sum, well and truly to be made, the said corporation does hereby bind itself, its successors and assigns, firmly by these presents.

The condition of the foregoing obligation is such that:

Whereas, the Government of the Philippine Islands desires to secure a safe and secure place for the deposit, custody and safe-keeping of moneys and funds collected or received by it in its governmental capacity, or under its custody and control; and an expeditious and effective method of auditing, inspecting, examining, transferring and disbursing said moneys and funds; and

Whereas, the said Commercial National Bank, hereinafter referred to as said corporation, has a suitable place therefor, and is prepared to undertake the custody, safe-keeping and accounting of said funds, said suitable place for said services being the banking house of said corporation in the City of Washington, D. C.

And whereas, it has been and is hereby agreed between the Government of the Philippine Islands and the said corporation as follows, namely:

(a) That the Government of the Philippine Islands will deposit with the said corporation at its banking house in the City of Washington, D. C., moneys and funds received by it, in its governmental capacity or under its custody or control, from time to time in
41 such amounts as it may find convenient; the Government of the Philippine Islands reserving, however, the right to terminate this agreement at any time without notice or liability to the said corporation.

(b) That the said corporation, in consideration of the benefits that it derives from its banking house being made such place of deposit, undertakes and agrees to receive on deposit, safely keep, disburse, and properly account for, all moneys deposited or turned over *or* it by the officers, agents or representatives of the Government of the Philippine Islands; to promptly honor and pay such checks or drafts as the said Government or its duly authorized agent, may draw against said deposits; and to pay over all balances at any time remaining in its hands of all and any moneys so received by it to the said Government of the Philippine Islands or its duly authorized agent, when called upon so to do.

(c) The said corporation further agrees to deposit with the Chief of the Bureau of Insular Affairs of the War Department from time to time, for and on account of the Government of the Philippine Islands, securities satisfactory to the Secretary of War in an amount sufficient, at their market value, and with required margins to fully cover all deposits made with said corporation of funds belonging to, in the custody of, or under the control of, the Government of the Philippine Islands, up to but not exceeding the amount of One

Million (1,000,000) dollars; and has agreed and does hereby agree to maintain at all times during the continuance of this agreement, the same or other securities satisfactory to the Secretary of War at all times to be kept in an amount, at market price with the required margins, sufficient fully to cover any and all deposits of such funds with said corporation belonging to, in the custody of, or under the control of, the Government of the Philippine Islands. Pro-
42 vided that other securities, of equal market value, to be approved by the Secretary of War, may, at any time during the continuance of this agreement, be substituted for the securities then on deposit, upon notice to the Chief of the Bureau of Insular Affairs. Said corporation further agrees that said securities shall be held, used, and controlled, and, in the event of the failure to carry out all or any of the provisions of this obligation, shall be owned and may be sold, transferred, or conveyed, in whole or in part, by the Government of the Philippine Islands as its absolute property at public or private sale and with or without notice to said corporation; *Provided, however*, that in case the said Government shall realize on said securities an amount in excess of the indebtedness of the said corporation to the Government of the Philippine Islands thereby secured, such excess, after deducting all expenses incurred in the sale or disposal of such securities, shall be paid to the said corporation, its duly authorized agent or its legal representatives.

Now, therefore, if said Commercial National Bank shall well and truly observe and perform all and singular the obligations incumbent upon it by reason of said agreement, then the above obligation shall be null and void; otherwise to remain in full force and effect.

In witness whereof, the said corporation has caused its name and corporate seal to be signed and affixed to these presents by its undersigned officers, thereunto duly authorized this Fourth day January, 1923.

(Signed) COMMERCIAL NATIONAL BANK,
By J. H. BADEN,
as its Vice President.
L. A. SLAUGHTER,
Vice Prest.
and
WALTER J. HARRISON,
as its Secty.

Approved as to form and execution:
LAW OFFICER,
Bureau of Insular Affairs.

43 Approved F. MC I.
(Signed) JOHN W. WEEKS,
Secretary of War.

Exhibit "E-2"

Schedule of bonds deposited with Brigadier General F. Le J. Parker, Chief of Bureau of Insular Affairs, Munitions Building, Washington, D. C., to secure "Treasurer of the Philippine Islands,

Treasury certificate fund account, demand deposit, which bonds are held in safekeeping by the Federal Reserve Bank of Richmond, Virginia.

Par value	Description
$58,000.00	Federal Farm Loan, Federal Land Bank Bonds, 4¾% of July 1, 1933–53.
$229,000.00	Federal Farm Loan, Federal Land Bank Bonds, 4¾% of July 1, 1934–54.
31,000.00	Federal Farm Loan, Federal Land Bank Bonds, 4½% of January 1, 1933–43.
66,600.00	Federal Farm Loan 4½% Bonds of May 1, 1992–42.
11,000.00	Federal Farm Loan 4½% Bonds of July 1, 1933–53.
95,000.00	Federal Farm Loan 4¼% Bonds of May 1, 1937–57.
100,000.00	U. S. Treasury 3¾% Bonds of March 15, 1956.
487,000.00	U. S. Treasury 3⅜% Bonds of March 15, 1941–43.
$1,077,000.00	

Exhibit "E–3"

DISTRICT OF COLUMBIA,
City of Washington, ss:

Personally appeared before me, the undersigned, a notary public in and for the said City and District, Edward A. Stockton, Jr., who being duly sworn, says that he, the said Edward A. Stockton, Jr., is a duly appointed and qualified Lieutenant Colonel of Coast Artillery, United States Army; and that under the immediate direction
44 of the Acting Chief of the Bureau of Insular Affairs, and with consent of the Supervising Receiver Insolvent Banks of the Treasury Department given on February 28, 1933, and with the written approval of the Secretary of War, sold on March 1st and 2nd, by competitive bidding, the securities deposited by The Commercial National Bank of Washington, D. C., as collateral to secure a deposit of Philippine public funds with that bank; that the attached inclosurse numbered 1 to 4 include true copies of the slips received from the brokers purchasing the bonds as a result of the aforesaid sale; that the total amount realized by the sale of the collateral was $997,448.33; that the sales were consummated by the delivery of the bonds through The Chase National Bank of New York to the purchasers against payment of the agreed purchase prices; that the money received in payment of these bonds was deposited in The Chase National Bank to the credit of the Treasurer of the Philippine Islands Treasury Certificate Fund Account, Demand Deposit.

[SEAL] (Signed) Edward A. Stockton, Jr.,
EDWARD A. STOCKTON, JR.,
Lieutenant Colonel, Coast Artillery, United States Army,
Assistant to Chief, Bureau of Insular Affairs,
Munitions Building, Washington, D. C.

Subscribed and sworn to this 7th day of April, 1933, as witness my hand and official seal.

[SEAL]. (Signed) C. C. COOMBS,
Notary Public.

45 *Exhibit "E-4"*

Description and list of pledged bonds sold by the Treasurer of the Philippine Islands, together with amounts derived from the sales and dates of sales.

Par value	Description	Date of sale	Proceeds derived from sales
$58,000.00	Federal Farm Loan Bonds, Federal Land Bank Bonds, 4¼% of July 1, 1933/53	March 1, 1933	$46,338.98
229,000.00	Federal Farm Loan Bonds, Federal Land Bank Bonds, 4¼% of 7/1/34-54	March 1, 1933	190,484.28
31,000.00	Federal Farm Loan Bonds, Federal Land Bank Bonds, 4½% of 1/1/33-43	March 1, 1933	26,276.38
66,000.00	Federal Farm Loan 4½% Bonds of May 1, 1932-42	March 1, 1933	56,240.26
11,000.00	Federal Farm Loan 4½% Bonds of July 1, 1933-53	March 1, 1933	9,230.38
95,000.00	Federal Farm Loan 4¼% Bonds of May 1, 1937-57	March 1, 1933	78,585.13
100,000.00	United States Treasury 3¼% Bonds of March 15, 1956	March 1, 1933	102,364.58
487,000.00	United States Treasury 3¼% Bonds of March 15, 1941-43	March 1, 1933	487,928.34
			$997,448.33

Exhibit "E5"

ROBERT C. BALDWIN, *Receiver,*
Commercial National Bank of Washington:
To Treasurer of the Philippine Islands:
Charge to: O-1 & U.
Voucher No. 1713.
Address, Washington, D. C.
Date, November 14, 1933.

Date	For—	Amount
	Lia. #16183—Treasurer of the Philippine Islands: Received of Robert C. Baldwin, Receiver of The Commercial National Bank of Washington, the sum of $6,154.41 in full settlement of the balance of an account in the name of Treasurer of the Philippine Islands, together with accrued interest, the acceptance of which sum operates as a full and complete release of the said Robert C. Baldwin as Receiver of The Commercial National Bank of Washington from any future claim arising out of the said account	$6,154.41

Approved by office letter dated November 10, 1933.
Received from Robert C. Baldwin, Receiver of the Commercial National Bank of Washington, D. C., $6,154.41 in full settlement of the within described account.

(Signed) TREASURER OF THE PHILIPPINE ISLANDS,
By (s) CREED F. COX,
Chief, Bureau of Insular Affairs, Payee.

Approved:
ROBERT C. BALDWIN.
By (s) R. W. WINTER.

Exhibit "E–5"

Treasurer of the Philippine Islands-- Liability No. 16183

Date bonds deposited	Par value	Bonds	Principal	Int.	Total	Book value	Net loss
Mar 17, 1931	$487,000.00	U. S. Treas. 3¼ of 3/15/41–43	$480,303.75	$7,624.59	$487,928.34	$490,956.88	$3,028.54
Oct 8, 1930	100,000.00	U. S. Treas. 3¼ of 3/15/46–56	100,625.00	1,739.58	102,364.58	106,875.00	4,510.42
Oct 8, 1930	5,000.00	Fed. Farm Loan 4¼ of 5/1/37–57	3,750.00	72.01	3,822.01		
Oct 8, 1930	25,000.00	Fed. Farm Loan 4¼ of 5/1/37–57	20,375.00	392.53	20,767.53	95,950.00	17,364.87
Oct 8, 1930	65,000.00	Fed. Farm Loan 4¼ of 5/1/37–57	52,975.00	1,020.59	53,995.59		
Oct 8, 1930	66,000.00	Fed. Farm Loan 4½ of 5/1/32–42	55,209.00	1,031.26	56,240.26	66,986.25	10,745.99
Oct 8, 1930	31,000.00	Fed. Farm Loan 4½ of 1/1/33–43	26,040.00	236.38	26,276.38	31,460.87	5,184.49
25M Dec. 8, 1925							
6M Oct. 8, 1930							
Oct. 8, 1930	11,000.00	Fed. Farm Loan 4½ of 7/1/33–53	9,130.00	100.38	9,230.38	11,206.25	1,975.87
Dec. 8, 1925	48,000.00	Fed. Farm Loan 4¾ of 7/1/33–53	37,500.00	392.67	37,892.67		
" 8, 1925	6,000.00	" " " " "	5,010.00	57.79	5,067.79		
" 8, 1925	2,000.00	" " " " "	1,670.00	19.26	1,689.26		
" 8, 1925	2,000.00	" " " " "	1,670.00	19.26	1,689.26		
40M " 8, 1925	100,000.00	Fed. Farm Loan 4¾ of 7/1/34–54	83,650.00	857.64	84,507.64	235,984.56	45,500.28
60M Oct. 28, 1932							
Dec. 8, 1925	54,000.00	" " " " "	42,187.50	441.75	42,629.25		
" 8, 1925	18,000.00	" " " " "	15,030.00	173.37	15,203.37		
" 8, 1925	50,000.00	" " " " "	41,750.00	481.60	42,231.60		
" 8, 1925	7,000.00	" " " " "	5,845.00	67.42	5,912.42		
Total			$982,720.25	$14,728.08	997,448.33	$1,099,341.06	$101,892.73
Balance due Treasurer of the Philippine Islands at suspension, including interest to suspension					$1,003,602.74		
Deficiency					$6,154.41		

47 *Separate answer of United States Shipping Board Merchant Fleet Corporation*

Filed September 19, 1935

* * * * * * * *

Comes now the defendant, United States Shipping Board Merchant Fleet Corporation, and for its separate answer to plaintiff's Bill of Complaint, defendant says:

1. It admits the allegations contained in Paragraph 1 of the Bill of Complaint.

2. It has no knowledge as to the truth of the allegations contained in Paragraph 2 of the Bill of Complaint.

3. It admits that this defendant is a corporation organized and existing under the laws of the District of Columbia and is located in said District, as alleged in Paragraph 3 of the Bill of Complaint. It denies that this defendent is doing any business in said District or anywhere else, except as a duly authorized agent of the United States, as hereinafter expressly set forth.

4. It admits that defendant, George H. Dern is a citizen of the United States and a resident of the District of Columbia, and that said defendant is Secretary of War of the United States, as
48 alleged in Paragraph 4 of the Bill of Complaint. It has no knowledge as to the truth of the other allegations contained in said paragraph.

5. It has no knowledge as to the truth of the allegations contained in Paragraph 5 of the Bill of Complaint.

6. It has no knowledge as to the truth of the allegations contained in Paragraph 6 of the Bill of Complaint.

7. It has no knowledge as to the truth of the allegations contained in Paragraph 7 of the Bill of Complaint.

8. It admits that defendant Homer S. Cummings is a citizen of the United States and a resident of the District of Columbia and that he is Attorney General of the United States. It has no knowledge as to the truth of the other allegations contained in Paragraph 8 of the Bill of Complaint.

9. It admits the allegations contained in Paragraph 9 of the Bill of Complaint.

10. It has no knowledge of, interest in or concern with the allegations contained in Paragraph 10 of the Bill of Complaint and said allegations state no cause of action against this defendant.

11. Answering Paragraph 11 of the Bill of Complaint, this defendant denies each and every allegation contained therein, except those allegations hereinafter expressly admitted.

It admits that the name of this defendant was changed from United States Shipping Board Emergency Fleet Corporation to United States Shipping Board Merchant Fleet Corporation by the provisions of the Appropriation Act (Public No. 600—69th Congress), making appropriations for the United States Shipping Board for the fiscal year ending June 30, 1928.

49 It admits that on or about August 18, 1917, the United States Shipping Board Emergency Fleet Corporation, which was the former name of this defendant corporation, opened a deposit account in the Commercial National Bank of Washington and that

from time to time this defendant made deposits in said bank which were credited in said account, but this defendant denies that the said account was open on the books of said bank at the time said bank closed its doors and suspended operations and says that the deposit account opened on or about August 18, 1917, as aforesaid, was closed on or about August 5, 1918.

It admits that the date said bank closed its doors and suspended operations, to-wit, on February 27, 1933, there was a balance of public funds amounting to $264.302.16 credited to this defendant on the books of said bank in another account entitled "United States Shipping Board Merchant Fleet Corporation, Agent, Deposit Account," which has been opened with said bank on or about December 1, 1921, pursuant to a resolution of the Board of Trustees of this defendant passed that day, which is hereinafter set forth in Paragraph 23 of this Answer. It says that by letter to said Bank, dated June 14, 1923, notice was given to said Bank that this defendant was acting solely as an agent of the United States Shipping Board, that this defendant had no beneficial interest in the account then carried in said Bank and that the title of said account should be changed to "United States Shipping Board Emergency Fleet Corporation, Agent, Deposit Account." Thereafter, the account was so carried by said Bank until defendant's name was changed and thereafter the account was carried on the books of said bank under the name, caption, and designation, "United States Shipping Board Merchant Fleet Corporation, Agent, Deposit, Account."

50 It admits that at the time of the suspension and closing of said bank, on February 27, 1933, there was a balance of public funds amounting to $144.995.12 credited to this defendant on the books of said bank in another deposit account which had been opened by this defendant on January 14, 1926, and which was carried under the name, caption, and designation, "United States Shipping Board Merchant Fleet Corporation, Agent, Good Faith Deposit Account."

It admits that continuously from the time of the opening of said account designated "Agent, Good Faith Deposit Account" until the name of this defendant was changed as aforesaid, this account was carried under the name, caption, and designation, "United States Shipping Board Emergency Fleet Corporation, Agent, Good Faith Deposit Account," but says that thereafter continuously for more than five years and until the said suspension of said bank the said account was carried under the name, caption, and designation, "United States Shipping Board Merchant Fleet Corporation, Agent, Good Faith Deposit Account."

It admits that this defendant had made deposits in said two accounts from time to time.

It admits that a first dividend of 20% and a second dividend of 30%, upon the outstanding claims against said Bank has been paid to certain depositors and creditors of said Bank as alleged in Paragraph 11 of said Bill of Complaint.

It admits that on November 19, 1931, said Bank duly executed and delivered to this defendant a certain instrument in writing and that Exhibit B-1, attached to the Bill of Complaint is a true copy thereof.

It admits that during the existence of said two deposit accounts said Bank pledged as security for the repayment of the public
51 funds on deposit in said Bank in said two accounts certain bonds of the par value of, to-wit, $400,000.00, which bonds are correctly described in Exhibit B-2 attached to the Bill of Complaint, but defendant expressly denies that said pledge was unlawful or illegal.

It says it is advised that plaintiff's allegations that there was no authority or capacity in said Bank to pledge said assets as security for said two deposits and that said bonds when pledged became a trust and were so held by this defendant for the benefit of said Bank, its depositors, creditors and share holders, are all conclusions of law which this defendant is not obligated to answer, but nevertheless, this defendant expressly denies each and every one of said conclusions of law, and upon the facts hereinafter set forth, says that the pledge of said securities was in all respects valid and legal and was and is binding upon said Bank and the depositors, creditors and stockholders thereof. It further says that the only obligation resting upon this defendant in favor of the Bank, its depositors, creditors or stockholders, was to pay to said Bank or its successor whatever surplus that might result upon liquidation of said bonds in excess of the amount required to fully satisfy the lien against said security, created as hereinafter set forth, and that this obligation was fully satisfied by the payment to the plaintiff on, to-wit, April 27, 1933, of the sum of $4,270.17, as admitted in Paragraph 11 of the Bill of Complaint.

It admits that after the closing of said Bank on February 27, 1933, and as a result of certain transactions consummated with the express consent of the plaintiff and with the express approval of the Comptroller of the Currency, which transactions are hereinafter set forth, this defendant's principal, the United States of America, has
52 received full and complete reimbursement for the balances of public moneys on deposit in said Bank to the credit of this defendant at the time said Bank was closed and suspended operations, together with interest on said balances; but this defendant denies that such reimbursement was accomplished in the manner set forth in Paragraph 11 of the Bill of Complaint and denies plaintiff's conclusions of law that the said reimbursement was erroneous and unlawful; and upon information and belief, this defendant says that the facts concerning said transactions were as follows:

After the said Bank closed and prior to March 8, 1933, the Treasurer of this defendant corporation conferred with certain officials of the Division of Insolvent National Banks in the office of the Comptroller of the Currency, which last named officer of the Government was then and still is charged by law with supervision over the affairs of said insolvent Bank, to determine what method should be pursued to safeguard and protect the interests of the United States in and to the public moneys deposited in said Bank to the credit of this defendant. As a result of said conference the president of this defendant corporation sent a letter to the Comptroller of the Currency under date of March 8, 1933, making inquiry as to whether this defendant might dispose of the bonds theretofore pledged by the said Bank as security for said deposits of public money. A true copy of said letter is hereto attached, marked Exhibit "A-1" and made a part hereof. As a result of said conference and said letter, the Deputy Comptroller of the Currency, by letter

dated March 17, 1933, transmitted to plaintiff a copy of defendant's letter (exhibit A–1) and authorized plaintiff to notify this defendant that plaintiff would interpose no objection to the sale of
53 the pledged securities and the application of the proceeds to payment of this defendant's deposit balances. A true copy of the Deputy Comptroller's said letter is hereto attached, marked Exhibit "A–2" and made a part hereof. The said Deputy Comptroller transmitted a copy of his said letter (exhibit A–2) to the president of this defendant corporation by letter dated March 17, 1933, a true copy thereof being hereto attached marked Exhibit "A–3", and made a part hereof. Thereupon, plaintiff notified this defendant he would interpose no objection to the sale of the pledged bonds and this defendant then delivered said bonds to the Treasurer of the United States for safe keeping. After such delivery was made and on April 4, 1933, the Chairman of the United States Shipping Board, by letter addressed to the Secretary of the Treasury, requested the Treasury Department to dispose of the pledged bonds and credit the proceeds thereof to the United States Treasury Account of the treasurer of this defendant corporation. A true copy of the Chairman's said letter is hereto attached, marked Exhibit "A–4" and made a part hereof. By two letters dated April 7, 1933, from plaintiff to this defendant, true copies thereof being attached hereto, marked Exhibit "A–5" and "A–6", respectively, and made a part hereof, plaintiff acknowledged the validity of the agreement therefofore made by said bank with this defendant whereby the Government bonds had been pledged by the bank as security for the deposits of public money maintained by defendant in said bank; and by said letters plaintiff requested the privilege of redeeming certain of said bonds which had a par value of $275,000 by payment to this defendant of a like sum in cash. Upon receipt of said letters
54 from plaintiff, the United States Shipping Board requested the Secretary of the Treasury orally and later by letter dated April 10, 1933, to refrain from selling said certain bonds at the par value of $275,000. Upon receipt of the Chairman's said letter (exhibit A–4) and the Shipping Board's oral modification thereof as aforesaid, the Under Secretary of the Treasury, by letter dated April 8, 1933, instructed the Federal Reserve Bank, New York City, that the Treasurer of the United States had been instructed to cancel and deliver to the Register of the Treasury for credit to the denominational account of said Federal Reserve Bank, $100,000 Treasury 3¼'s Bonds of 1946–49, and $25,000 Treasury 3¾'s Bonds of 1946–56, said bonds being some of the collateral pledged by said Commercial Bank of Washington with this defendant and delivered to the Treasurer of the United States as aforesaid. The said letter further instructed said Federal Reserve Bank to withdraw like face amounts of such Treasury Bonds as above described from its denominational exchange stocks and arrange for their sale on the market, the proceeds to be credited to the account of the treasurer of this defendant corporation. A true copy of said letter to the Federal Reserve Bank is hereto attached, marked Exhibit "A–7". Plaintiff's offer to redeem certain of said bonds having a par value of $275,000 by payment to this defendant of a like sum in cash was reported to the United States Shipping Board and acceptance of said offer was approved by that Board on April 11, 1933. By letter

dated April 12, 1933, from the Chairman of the United States Shipping Board to the Under-Secretary of the Treasury, a true copy thereof being hereto attached, marked Exhibit "A–8", and made a part hereof, the Treasury Department was advised of the United States Shipping Board's approval of plaintiff's offer and the Treasury Department was requested to handle the transaction
55 along the lines indicated in said letter, but the Comptroller General of the United States, by letter to the Chairman of the United States Shipping Board, dated April 14, 1933, objected to the proposed transaction on the ground that said bonds then possessed a market value greater than the par value thereof and the proposed redemption arrangement would result in a surrender of contractual rights of the United States without an adequate valuable consideration therefor. A true copy of the Comptroller General's letter is attached hereto, marked Exhibit "A–9", and made a part hereof. After further negotiations between plaintiff and defendant and the Comptroller of the Currency, it was mutually agreed that certain of the pledged bonds, namely, the Fourth, 4¼% Liberty Bonds of the par value of $200,000, and the United States Treasury 3⅜% Bonds of the par value of $75,000 with unmatured interest coupons attached, would be sold and delivered to plaintiff for the sum of $281,695.31 in cash. By letter dated April 18, 1933, from the Chairman of the United States Shipping Board to the Under-Secretary of the Treasury, copy thereof being hereto attached, marked Exhibit "A–10", and made a part hereof, the Treasury Department was advised of said revised agreement and requested to forward said bonds to the Federal Reserve Bank, New York City, for safe keeping and subject to the order of the Comptroller of the Currency for the benefit of the depositors of the Commercial National Bank of Washington, after the checks received by this defendant and deposited in the Treasury as hereinbefore set forth, had been collected. In completing said transaction the Treasury Department did not deliver to the Federal Reserve Bank of New York City the identical bonds theretofore pledged by said bank, but as appears from a letter from
56 the Assistant Secretary of the Treasury to the Deputy Governor of said Federal Reserve Bank, dated April 21, 1933, a true copy thereof being hereto attached, marked Exhibit "A–11", and made a part hereof, the Treasurer of the United States was instructed to cancel said bonds and deliver them to the Register of the Treasury for credit to the denominational exchange account of said Federal Reserve Bank and the Commissioner of the Public Debt authorized said Federal Reserve Bank to deliver and hold for safe keeping other similar bonds, subject to the order of the Comptroller of the Currency for the benefit of the depositors of the Commercial National Bank of Washington. The said officials of the Treasury Department and the Federal Reserve Bank, New York City, liquidated the interests of the United States in the bonds pledged by said bank with this defendant substantially in the manner authorized and directed in the said two letters of the Under-Secretary of the Treasury to said Federal Reserve Bank (exhibits A–7 and A–11), except that the proceeds derived from the sale of the bonds sold by the Federal Reserve Bank of New York City, which proceeds amounted to the sum of $125,460.94, were deposited in said Federal Reserve Bank to the "credit of the Treasurer of the

United States for account of Heber M. Wells, Treasurer, United States Shipping Board Merchant Fleet Corporation, under Symbol No. 93500", as appears from letter from the Assistant Deputy Governor of the Federal Reserve Bank of New York to the Under-Secretary of the Treasury, dated April 12, 1933, a copy thereof being hereto attached, marked Exhibit "A-12" and made a part hereof.

Defendant denies that it collected and retained the sum of $5,515.49 derived from the coupons affixed to the pledged bonds, but says that on April 5, 1933, it deposited uncashed matured interest coupons amounting to $1,734.24 with the Treasurer of the
57 United States and that on April 17, 1933, it also deposited in the Treasury of the United States check of the Treasurer of the United States theretofore received for the remainder of the matured interest coupons on said bonds. Defendant says that this liquidating of said matured interest coupons was pursued with the knowledge and consent of both the Comptroller of the Currency and plaintiff.

Defendant further says that as a result of the liquidation by the United States Treasury Department as above set forth of the interests of the United States in the bonds pledged by said bank as security for the deposits of public moneys made by this defendant in said Bank, the Treasurer of the United States had and received the sum of $125,460.94 as proceeds of the securities sold by the Federal Reserve Bank of New York City as aforesaid, the further sum of $281,695.31 proceeds of the checks drawn by the Comptroller of the Currency as aforesaid, and the further sum of $5,984.24 proceeds of the matured interest coupons deposited by this defendant as aforesaid, or a total of $413,140.49. Defendant further says that said proceeds were applied in liquidation of the balance of $264,125.05 in defendant's "Agent Deposit Account" in said bank on February 27, 1933, less an adjustment made in said account on March 29, 1933, amounting to $943.54, leaving a net balance of $263,181.51, plus interest accrued on the said balance up to February 27, 1933, amounting to $177.41, plus interest on said balance from February 28, 1933, to April 17, 1933, inclusive, amounting to $341.68, or a total applied to liquidation of said "Agent Deposit Account" of $263,700.30,
58 and said proceeds were also applied in liquidation of the balance of $144,883.62 in defendant's "Agent Good Faith Deposit Account" in said bank on February 27, 1933, plus interest on said balance to February 27, 1933, amounting to $111.50, and plus interest on said balance from February 28, 1933, to April 17, 1933, inclusive, amounting to $174.90, or a total of $145,170.02, making a gross total of $408,870.32 applied in liquidation of the interest of the United States in said pledged bonds. The difference between the total proceeds from said bonds, amounting to $413,140.49, and the $408,870.32 so applied, which difference amounts to $4,270.17, was paid to the plaintiff by this defendant on April 27, 1933. A tabulation showing in detail the application of the proceeds of said bonds is hereto attached, marked Exhibit "A-13" and made a part hereof.

This defendant denies that by reason of said transactions or any of them, a trust in favor of the depositors, creditors and stockholders of said bank was created and is enforceable by plaintiff against this defendant in this or any other proceeding.

For further answer to the allegations contained in Paragraph 11 of the Bill of Complaint, this defendant refers to Paragraphs 15 to 37, inclusive, of this answer.

12 to 14. It has no knowledge of, interest in or concern with the allegations contained in Paragraphs 12, 13 and 14 of the Bill of Complaint and said allegations state no cause of action against this defendant.

59 Further answering the Bill of Complaint this defendant says:

15. Under Act of Congress, approved September 7, 1916, (39 Statutes at Large, 728; U. S. C. Title 46, Sec. 801, et seq.), designated by the statutory name of "Shipping Act, 1916", provision was made for the creation of a Federal Board, to be appointed by the President of the United States and to be known as United States Shipping Board. Pursuant to said Act Commissioners were duly appointed by the President and confirmed by the Senate. The said Board organized in January 1917, and thereafter and up to August 10, 1933, acted as an independent Federal establishment, with all the powers and duties conferred upon it by said Shipping Act, 1916, and after June 5, 1920, with all the powers and duties conferred upon it by the Merchant Marine Act, 1920, and other Acts of Congress not herein specifically mentioned.

16. Section 11, Shipping Act, 1916, authorized the United States Shipping Board, if in its judgment such action was necessary to carry out the purposes of the said Act, to form under the laws of the District of Columbia one or more corporations, provided that the capital stock of such corporation or corporations should not exceed $50,000,000 and, for and on behalf of the United States, to subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation and do all other things with regard thereto necessary to protect the interests of the United States and to carry out the purposes of the Shipping Act, 1916. Immediately after the Congress declared war on the Imperial German Government on April 6, 1917, the United States, acting through the United States Shipping Board, entered upon an extensive shipbuilding program. To provide a
60 convenient agent for superintending and carrying out said program and to carry out the purposes of the Shipping Act, 1916, and pursuant to its provisions, the said Board caused to be incorporated, on April 16, 1917, under the laws of the District of Columbia, a Federal corporation, under the name "United States Shipping Board Emergency Fleet Corporation," which corporation under its present name, United States Shipping Board Merchant Fleet Corporation, is this answering defendant.

17. After its incorporation as aforesaid, and during the year 1917, the said United States Shipping Board, for and on behalf of the United States, subscribed to all the authorized capital stock of defendant corporation in the sum of $50,000,000 and caused said sum to be paid to this defendant from the Treasury of the United States. During its entire corporate existence the said sum of $50,000,000, so received by this defendant from the United States, has been all the money this defendant has ever possessed as private corporate funds and the said entire sum of $50,000,000 was disbursed, paid out and expended by this defendant prior to December 31, 1917. Since the last mentioned date this defendant has not received or possessed any private corporate funds of its own, and all of the funds that have

come into its possession or that have been under its control since December 31, 1917, have been funds appropriated by the Congress of the United States to be used and expended by defendant as an agent of the United States, or funds received by defendant as an agent of the United States from private sources and in which the defendant has possessed no equitable or beneficial corporate interest.

18. After its incorporation and up to June 5, 1920, all of this defendant's activities and transactions were carried on as an agent of the United States by virtue of powers directly delegated to this defendant by various Executive Orders of the President of the
61 United States, by Acts of Congress and by resolutions duly adopted by the United States Shipping Board. While acting as such public agent, during said period, this defendant received and disbursed for the account of the United States very large sums of money and acquired thereby and by expenditure of its own corporate funds as aforesaid, a great amount of real and personal property to which it held title, up to June 5, 1920, as an Agent and as a trustee for the United States.

19. On June 5, 1920, the Act of Congress designated by the statutory name, Merchant Marine Act, 1920, was approved by the President, (41 Statutes at Large, 988; U. S. C. Title 46, Sec. 861, et seq.). By section 4 of said Act all of the property and assets of whatsoever kind, acquired by this defendant as aforesaid, except such as in the opinion of the President of the United States were required for use by other branches of the service of the Government of the United States, were transferred to the United States Shipping Board, and this defendant thereby was divested, by operation of law, of any private corporate ownership in all money or property in its possession or under its control, including all property acquired for the use and account of the United States through expenditure of its own corporate funds, as hereinbefore stated.

20. On April 16, 1923, this defendant, by a formal deed duly signed, sealed and delivered by its President and Secretary thereunto duly authorized, and upon a valuable consideration, granted, bargained, sold, transferred, assigned and conveyed to the United States of America, its successors and assigns, all the goods, chattels, bonds, bond notes, shares of stock, contracts, securities, claims, personal property, and choses in action, including accounts against divers persons for the payment of money, and all personal property of
62 every kind and description whatsoever, wherever the same was situated, theretofore acquired by this defendant and not theretofore disposed of by it and then remaining under the disposition or control of this defendant. A true copy of said deed is hereto annexed, marked Exhibit "B" and by reference thereto incorporated herein. Upon the execution and delivery of said deed the defendant, by its voluntary act, divested itself of all title or color of title to any and all money and other personal property then in its possession or on deposit in any bank or banks, and thereafter and up to the time this suit was filed this defendant has not owned any personal property, including money, and has not possessed or controlled any money on deposit in any bank or banks except public funds appropriated by Congress and funds received by this defendant in the performance of its authorized activities as a public agent as hereinafter set forth and in which this defendant possessed no equitable or beneficial interest.

21. The Merchant Marine Act, 1920, conferred various powers and duties upon the United States Shipping Board with respect to the sale and operation of vessels owned by the United States and controlled by said Board and with respect to the liquidation of the property and other assets acquired for the account of the United States prior to June 5, 1920, and transferred to said Board as aforesaid. Section 12 of said Act continued the legal existence of the defendant corporation until all of the Government's merchant vessels, transferred to the Board, were sold in accordance with the provisions of said Act. Section 35 of said Act provided that, except as therein specifically provided, the power and authority vested in the United States Shipping Board might be exercised directly by the Board, "or by it through the United States Shipping Board Emergency Fleet Corporation." Pursuant to the authority so conferred, the United States Shipping Board, by suitable resolutions duly and legally adopted, subsequent to June 5, 1920, and from time to time, delegated certain of its powers with respect to the sale and operation of vessels, liquidation of the Government's property and assets and disbursement and collection of its public money, to this defendant, to be exercised and performed by this defendant as the Board's administrative agent. True copies of the resolutions adopted by the United States Shipping Board as aforesaid are hereto annexed, marked Exhibits "C," "C–1," "D," and "E," respectively, and made a part hereof.

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22. In the Sundry Civil Act, approved June 5, 1920 (Public 246, H. R. 13870), the same date the Merchant Marine Act, 1920, became effective, the Congress appropriated to the United States Shipping Board a large sum of money, including the unexpended balance on hand on July 1, 1920, which appropriation, inter alia, was for the following purposes.

"The expenses of the United States Shipping Board Emergency Fleet Corporation, during the fiscal year ending June 30, 1921, for administrative purposes, the payment of claims arising from the cancellation of contracts, damage charges, and miscellaneous adjustments, maintenance and operation of vessels, and the completion of vessels now under construction."

Thereafter, and until the fiscal year ending June 30, 1933, the Congress has annually appropriated large sums of money to the United States Shipping Board for "the expenses" of this defendant and other purposes, and under the appropriations so made and under the authority delegated to this defendant by resolutions of the United States Shipping Board as aforesaid, this defendant's activities as an agent of said Board have been financed and this defendant has acquired possession of and has disbursed a large part of such public money so appropriated, but the acquirement and possession and disbursement of such appropriated public money has at all times been in defendant's capacity as a duly authorized agent of the United States and not in its capacity as a private corporation.

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23. At the time of the closing of the Commercial National Bank of Washington on February 27, 1933, the moneys on deposit in said Bank, amounting to $264,302.16, and credited on the books of said bank under the name, caption, and designation, "United States Shipping Board Merchant Fleet Corporation, Agent, Deposit Account", as alleged in Paragraph 11 of the Bill of Complaint, were wholly

and exclusively composed of public moneys derived from proceeds of sale of Government vessels, revenues from the operation of Government vessels, rentals from real estate owned by the United States, bank interest on public funds, and miscellaneous revenues of the United States, which had come into the possession of or under the control of this defendant in the course of its activities as a duly authorized agent of the United States, as hereinabove set forth in Paragraph 21 of this Answer.

The said deposit account had been opened on December 1, 1921, and thereafter had been continuously maintained in said Bank up to the time of the closing thereof, as aforesaid, pursuant to a resolution duly adopted on December 1, 1921, by the Board of Trustees of this defendant corporation, which resolution was as follows:

"Whereas, In the interests of the United States it is desirable to facilitate the negotiation of checks drawn on depositaries other than the Treasurer of the United States,

"Resolved, That the Treasurer of the United States Shipping Board Emergency Fleet Corporation be and he is hereby authorized to open an account with the Commercial National Bank of Washington, D. C., a constituent member of the Federal Reserve and a government depositary, in the name of the United States Ship-
65 ping Board Emergency Fleet Corporation, subject to the check of the Treasurer, this account being established for the purpose of depositing for immediate collection checks drawn in favor of the Emergency Fleet Corporation on depositaries other than the Treasurer of the United States; proceeds from said checks to be placed in said account to the credit of the Emergency Fleet Corporation in order that they may be available for immediate expenditure by the Emergency Fleet Corporation or transfer to the Treasury of the United States."

No disbursements from this deposit account were made by this defendant and no checks were drawn thereon except checks for adjustments with said bank and checks deposited with the Treasurer of the United States for the purpose of transferring funds from said account to the United States Treasury. Such transfers of funds from said account were made from time to time in round sums of $50,000 or $100,000 and the funds so transferred were immediately commingled in the United States Treasury with other public funds of the United States.

Section 14 of the Merchant Marine Act, 1920, requires that the net proceeds from the activities authorized by that Act, less such amount as might be authorized annually by Congress to be withheld as operating capital, and less amounts needed for the insurance and construction loan funds maintained by the United States Shipping Board, should be covered into the Treasury of the United States as miscellaneous receipts.

24. At and before the day and date defendant opened the said "Agent, Deposit Account", in said bank on December 1, 1921, as aforesaid, and continuously since that date, and up until the date of the filing of this Answer, this defendant has kept and maintained in the Treasury of the United States deposit-checking accounts in which this defendant from time to time deposited public
66 moneys controlled by this defendant in its capacity as an agent of the United States as aforesaid, which public moneys had come into this defendant's possession or under this defendant's con-

trol from governmental activities precisely similar to the transactions from which all the funds deposited by this defendant in said bank were derived, and upon information and belief all said funds so deposited were received and accepted by the Treasurer of the United States as public moneys of the United States, and were held and disbursed by the Treasurer of the United States upon order of this defendant supported by public vouchers duly executed.

25. At the time of the closing of the Commercial National Bank of Washington, on February 27, 1933, the funds on deposit in said Bank amounting to $144,995.12, and credited on the books of said Bank under the name, caption and designation, "United States Shipping Board Merchant Fleet Corporation, Agent, Good Faith Deposit Account", as alleged in Paragraph 11 of the Bill of Complaint, were wholly and exclusively derived from funds delivered to this defendant as security for performance of sales or purchase proposals submitted to this defendant as agent for the United States Shipping Board or other similar suspense items and for which the United States was accountable. This defendant had continuously kept and maintained said deposit account in said Bank since January 14, 1926. No disbursements were made from this "Good Faith Deposit Account" and no checks were drawn thereon except to unsuccessful bidders for return of their deposits or for deposit with the Treasurer of the United States when the bidder's deposit was forfeited or was credited on the transaction for which the deposit had been made. This defendant possessed no equitable or beneficial interest in any of the funds deposited in said account and was merely the trustee custodian of said funds, the United States being at all times
67 the real owner of all of said funds and of said bank credit.

From time to time, and when funds had accumulated in said "Good Faith Deposit Account" which had been credited on the purchase of ships, or other transactions, or forfeited to the United States, this defendant would transfer such accumulation of funds to the Treasury of the United States by checks drawn on said account and deposited with the Treasurer of the United States, who, upon information and belief, received and accepted such transfers of funds as public moneys of the United States.

26. Upon information and belief, from and after the times said two bank accounts were opened by this defendant as aforesaid, and during all the time said bank accounts were maintained and up to and including February 27, 1933, the officers and directors of said bank had notice and well knew that all the funds deposited in said two accounts were public funds, in which this defendant possessed no beneficial or private corporate interest, as appears from letter from said banks to this defendant's Treasurer, hereto attached, marked Exhibit "E 1" and made a part hereof and they well knew that the possession of and control by this defendant of said deposit accounts and the funds deposited therein was solely in its capacity as an agent of the United States.

27. On November 4, 1931, the United States Shipping Board, and on November 11, 1931, the Board of Trustees of this defendant, duly passed resolutions in the words, letters and figures following, to-wit:

"Whereas, monies of the United States have been deposited in divers banking institutions by the Merchant Fleet Corporation; and

"Whereas, it is provided under Title 12, Section 90, of the Compiled Statutes, that the Secretary of the Treasury shall require all

national banking institutions who are acting as financial agents of the Government to give satisfactory security by the deposit of United States Bonds and otherwise for the safekeeping and prompt payment of the public money deposited with them; and

"Whereas, it is the desire of the United States Shipping Board to follow the plan thus outlined by Act of Congress;

68 "Resolved, that all banks and banking institutions which have or shall have monies of the United States in the name of the United States Shipping Board Merchant Fleet Corporation be and they are hereby required as a condition of the said deposit to give satisfactory security to said Merchant Fleet Corporation by the deposit of United States Bonds and otherwise for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as depositaries of such monies.

"Further resolved, that the Treasurer of the United States Shipping Board Merchant Fleet Corporation be and he is hereby authorized and required to address to each one of the said banks and banking institutions now having such monies on deposit, a letter in the form hereto attached enclosing a form of deposit agreement, and as a condition for the continuance of said deposit the said Treasurer of the said Merchant Fleet Corporation is authorized and directed to require the signing of an agreement in the form attached hereto, and the deposit by such depositary of United States Bonds in adequate amounts as collateral for the repayment of the amount of each deposit in each bank and banking institution, respectively".

28. Upon information and belief, after the adoption of said resolutions by the United States Shipping Board and by this defendant, and prior to November 19, 1931, Albert H. Denton, who was then a Commissioner of the United States Shipping Board and Chairman of said Board's Committee on Finance, was expressly authorized by said United States Shipping Board to negotiate with said bank to obtain security therefrom for the deposits of moneys of the United States then being maintained in said bank by this defendant as aforesaid. Thereupon, and pursuant to said authority and acting for and upon behalf of the United States, the said Albert H. Denton negotiated with the officers of said bank and conferred with the Comptroller of the Currency concerning said deposits and the obtaining of security therefor. During the course of said negotiations said Denton notified the said bank and the officers thereof that

69 unless adequate collateral was pledged by said bank as security for said deposits of public funds the said accounts would be closed by the withdrawal of the balances therein.

As a result of said negotiations and with the approval of the Comptroller of the Currency, the said bank agreed to give security for the public moneys deposited with it by this defendant and the terms of said agreement were embodied in a written instrument duly executed by said bank on November 19, 1931 (Exhibit B-1 attached to the Bill of Complaint). On, to-wit, November 19, 1931, the Commercial National Bank of Washington, in execution of said written instrument, delivered to this defendant, and this defendant received and accepted, the certain promissory notes described in said agreement, to the aggregate principal amount of $1,858,377.68, secured by deeds of trust on certain real properties, and the same thereafter

continuously until they were surrendered and returned to the said bank as hereinafter alleged, were held by this defendant, as agent of the United States as aforesaid, as security for prompt payment by the bank, on demand, of any and all funds deposited or thereafter deposited in said bank to the credit of this defendant.

On December 9, 1931, the United States Shipping Board duly approved the said agreement and ratified the acceptance by this defendant, through its Treasurer, of the promissory notes therein described, upon the conditions therein stated.

29. On July 20, 1932, by a letter of that date, a true copy of which is hereto annexed, made part hereof and marked Exhibit "F", addressed to the Treasurer of this defendant, the said bank, among other things, requested to be advised whether a substitution
70 for the said promissory notes delivered as aforesaid by the said bank to this defendant of United States Government bonds or Treasury Notes as security for the said deposits would be acceptable to this defendant, and advised that the said bank was prepared to make such exchange at any time and would like to close such transaction without delay; and on the same day upon the written recommendation of that date, a true copy of which is hereto annexed, made part hereof and marked Exhibit "G", by the President of this defendant to the United States Shipping Board, the United States Shipping Board approved and authorized the proposed substitution of securities.

30. On August 2, 1932, the Board of Directors of the said bank adopted a resolution, a true copy of which is hereto annexed, made part hereof and marked Exhibit "H" hereto, authorizing the substitution for the said promissory notes delivered to this defendant as aforesaid of the bonds hereinafter described, and on the same day the said bank addressed a letter, a true copy of which is hereto annexed, made part hereof and market Exhibit "I", to the United States Shipping Board, wherein, among other things, were stated the conditions subject to which such substitution would be made; and on August 3, 1932, the said bank addressed and caused to be delivered to the Treasurer of this defendant a letter, a true copy of which is hereto annexed, made part hereof and market Exhibit "J", with which was enclosed a certified copy of the aforesaid resolution of the Board of Directors of said bank passed August 2, 1932, and also the aforementioned letter of August 2, 1932, addressed to the United States Shipping Board by the said bank.

71 31. On August 5, 1932, pursuant to and in conformity with the aforesaid action of the United States Shipping Board of July 20, 1932, and the aforesaid resolution of the Board of Directors of said bank of August 2, 1932, and subject to the conditions stated in the aforesaid letter of said bank to the United States Shipping Board, of August 2, 1932, this defendant surrendered to the said bank all of said promissory notes and at the same time received from said bank as security for said deposits bonds of the United States of the descriptions and in the forms set out below, to-wit:

$100,000 U. S. Treas	3¼%	Bonds of 6/15/46-49.
75,000 U. S. Treas	3⅜%	Bonds of 3/15/43.
25,000 U. S. Treas	3½%	Bonds of 3/15/46-50.
200,000 4th Liberty Loan	4¼%	Bonds of 10/15/33-38.

and thereafter continuously until the said suspension and closing of the bank and until the disposal of said bonds as hereinafter alleged,

for the satisfaction of the public moneys to the credit of this defendant in said bank at the time of said closing, this defendant held the said bonds as security as aforesaid.

32. At the time said instrument in writing was executed and delivered by said bank and said security was given by said bank as aforesaid on November 19, 1931, the balance of public moneys on deposit in said bank to the credit of this defendant in the account carried under the name, caption, and designation "United States Shipping Board Merchant Fleet Corporation, Agent, Deposit Account" was the sum of $643,639.82. Thereafter, and up to the time of the closing of said bank on February 27, 1933, acting in reliance upon the security pledged by said bank as aforesaid, this defendant made
72 further large deposits of public funds in said bank which were credited by said bank to defendant in said Agent, Deposit Account, the total sum of such additional deposits being $1,970,656.79.

Also, on November 19, 1931, the balance of public moneys on deposit in said bank to the credit of this defendant in the account carried under the name, caption, and designation, "United States Shipping Board Merchant Fleet Corporation, Agent, Good Faith Deposit Account," was the sum of $64,681.25. Thereafter, and up to the time of the closing of said bank on February 27, 1933, acting in reliance upon the security pledged by said bank as aforesaid, the defendant made further large deposits of public funds in said bank which were credited by said bank to defendant in said Agent, Good Faith Deposit Account, the total sum of such additional deposits being $170,888.60. A tabulation showing by months the deposits of public moneys made by this defendant in said Bank from November 19, 1931, to February 27, 1933, inclusive, is hereto annexed, marked Exhibit "K" and made a part hereof.

33. This defendant has been informed and believes, and therefore avers the fact to be that at the time said agreement was made and said collateral was pledged and accepted as aforesaid, the said bank was solvent and then possessed other assets sufficient to satisfy all lawful demands of all other creditors of said bank. Upon information and belief, at the time said deposits of public moneys were being made by this defendant in said Bank as aforesaid and up to the time of the closing of said Bank as aforesaid, the Commissioners of the United States Shipping Board and the Trustees of this defendant corporation and the Treasurer thereof, were led to believe and did believe that said Bank was authorized to receive said deposits of public moneys and to pledge assets of said Bank as security therefor.

73 34. The said action of this defendant and of said bank in exacting and in giving security, respectively, for said two deposit accounts, upon information and belief, was known to and approved by the Department of the Treasury of the United States, and by the officers thereof charged with supervision of National Banks, including the Comptroller of the Currency, and by the exaction and giving of security for this defendant's two deposit accounts, and the approval thereof by the Treasury Department every provision of Section 90, Title 12, United States Code, was complied with within the intent of the statute, and the pledge of security for the deposits by the bank was in all respects valid and lawful and is binding upon

the plaintiff and upon all the stockholders and creditors of said bank.

35. Upon information and belief, said bank, at the time this defendant opened the said deposit account on, to-wit, December 1, 1921, was not then, and up to the time of the closing of said bank on February 27, 1933, did not become designated by the Secretary of the Treasury a depository of public moneys of the United States, except in the manner hereinbefore set forth and except as a limited depository with authority to accept not to exceed $5,000 of deposits made by United States Courts and their officers for credit to their official checking accounts, as set forth in a letter of January 26, 1923, from the Chief of the Division of Deposits of the Treasury Department addressed to James B. Reynolds, Vice-President of said bank, a copy of said letter being hereto attached, marked Exhibit "L," and made a part hereof.

36. The money, amounting to $281,695.31, collected by the Treasurer of the United States on the checks drawn by the Comptroller of the Currency as aforesaid, the money amounting to $125,160.94 credited to the Treasurer of the United States by the Federal Reserve Bank of New York City as aforesaid, the money amounting to $4,250.00 and the matured interest coupons amounting to $1,734.24, deposited by this defendant in the Treasury of the United States as aforesaid, amounting to a total of $413,140.49, then became commingled with other public money of the United States and so remained until the end of the fiscal year 1933, to-wit, until midnight, June 30, 1933, and at that time the only appropriation act under which said moneys might have been paid out or expended by this defendant, to-wit, "An Act making appropriations for the Executive office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1933, and for other purposes," approved June 30, 1932 (47 Stat. 468), had ceased to be of any effect.

37. This defendant does not now possess or control any of the money claimed by plaintiff or any private corporate money or property on which a trust could be imposed by this Court as prayed by plaintiff. This defendant has no property or money of its own and does not possess, hold, or control any property or money, except public money appropriated by Congress to the former United States Shipping Board or to the Department of Commerce, which succeeded on August 10, 1933, to the powers and duties formerly vested in the United States Shipping Board, for certain specified and particular public purposes and objects. The purposes and objects for which said appropriations of public money were made do not include provision for payment of a judgment or decree against this defendant in actions of this nature, and this defendant could not lawfully pay or satisfy from any money now in its possession or under its control any decree for the payment of money that might be entered in this action.

In so far as the bill of complaint herein attempts or purports to state a cause of action in equity against this defendant and as defenses thereto, this defendant states:

(a) The Bill of Complaint is multifarious in that there is a misjoinder of several causes of actions and a misjoinder of parties defendant. The facts pleaded with respect to the alleged deposits and preferences to Inland Waterways Corporation bear no relation to and have no connection with the facts alleged concerning deposits

made by and preferences given to the other defendants. The facts alleged with respect to the deposits made by and supposed preferences given to this defendant bear no relation to the facts pleaded with respect to the other defendants. The same is true with respect to the causes of action alleged against the Secretary of War and the Attorney General. The circumstance that each one of the defendants is a government agent or agency does not present a common point of decision. The authority of each of said agents and the character of the money deposited by each, and the circumstances under which the deposits were made and the pledges taken, are dependent on different statutory provisions and upon different sets of facts. If this suit is not dismissed, this defendant is entitled to and prays the Court to order that this defendant shall have a separate trial by the Court.

(b) Plaintiff is not entitled to maintain this action against this defendant because, as appears upon the bill and this answer, only property rights, property interests, and public moneys of the United States are involved in the transactions between this defendant
76 and said bank and between this defendant and the plaintiff herein. This defendant's principal, the United States of America, is an indispensable party whose interests are and will be vitally affected by this suit and in whose absence the Court ought not to proceed, but the amount claimed is in excess of $10,000, and this Honorable Court does not possess jurisdiction to adjudicate the rights of the United States in the subject matter of this suit.

(c) Even if the deposits to the credit of this defendant in said bank at the time of the closing thereof were not lawfully secured by the pledged bonds, the payments plaintiff is now seeking to recover were voluntarily made by plaintiff with full knowledge of all the facts, the transaction is fully executed and upon all the facts the equities asserted by plaintiff are inferior to the equities of this defendant and of its principal, the United States.

(d) The moneys paid from the funds of said bank by order of the Comptroller of the Currency and the moneys received from the sale of the pledged bonds and from the matured interest coupons thereon, which constitute the trust res claimed by plaintiff, are not in the possession of nor under the control of this defendant, and have not been under the control of this defendant since June 30, 1933, at which time said moneys were commingled with other public moneys in the Treasury of the United States.

(e) The deposits of public moneys made by this defendant in the two accounts maintained in said bank and secured by the pledge of United States bonds as hereinabove set forth were in accordance with the true intent and meaning of Section 90, Title 12, United States Code, and the repayment to the United States of the balances
77 on deposit in said bank at the time of the closing thereof, together with interest accrued thereon, was in all respects valid and lawful. Equity regards substance rather than form and equity regards as done that which ought to be done.

(f) In the alternative, if said bank at the time it received the deposits of public moneys from this defendant as hereinabove set forth was not an authorized depositary of public moneys and particularly, if said bank had not been authorized as a public depositary of the public moneys controlled by this defendant as an agent of the United States, said bank and the officers and agents thereof knowingly

violated Section 96 of the Criminal Code of the United States (Sec. 182, Title 18, U. S. C.), and did then and there embezzle said public moneys. The said bank at the time of each such deposit became and was bailee and trustee of the moneys so deposited, for the use and benefit of the United States, and did not acquire title to any of the same, but the title of all thereof remained in the United States, and by accepting and receiving each of said deposits of money and commingling the same with other moneys, said bank did, by force of law, replace the same by charging the bonds and other property so, as aforesaid, by the said bank, delivered to and held by this defendant, with a trust as security for the repayment of the money and funds of the United States deposited by this defendant as aforesaid; and the bonds held by this defendant as aforesaid at the time of the suspension and closing of said bank remained and were at that time so charged; and thereafter, with the knowledge and participation of the plaintiff, in the execution of said trust, the said bonds were disposed of and the proceeds thereof were applied first to the satisfaction of
78 the sums in said accounts to the credit of this defendant, and the excess of such proceeds were paid to and received by the plaintiff.

(g) If plaintiff is entitled to recover from this defendant the payments described in the Bill of Complaint, plaintiff possesses a plain, adequate, and complete remedy at law.

Wherefore, having fully and completely answered the Bill of Complaint, this defendant prays that this action be dismissed as to this defendant, with judgment for its costs herein expended and such other equitable relief as the exigencies of the case may require.

LESLIE C. GARNETT,
United States Attorney.
H. L. UNDERWOOD,
Assistant United States Attorney.
O. P. M. BROWN,
Special Counsel,
United States Shipping Board
Merchant Fleet Corporation.
Attorneys for Defendant,
United States Shipping Board
Merchant Fleet Corporation.

F. R. CONWAY,
Of Counsel.

79 DISTRICT OF COLUMBIA, *ss:*

Charles D. Gibbons, being first duly sworn on his oath, deposes and says: that he is the Treasurer of the United States Shipping Board Merchant Fleet Corporation, the defendant in this action, and that he is authorized to make this affidavit for said defendant; that he has read the foregoing answer made by said defendant to the bill of complaint herein and knows the contents thereof; that the facts stated in said answer without qualification are within his knowledge and are true, and that the facts stated therein upon information and belief he believes to be true.

CHARLES D. GIBBONS.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 16th day of September, A. D. 1935.

[SEAL] E. W. ANDERSEN.

80 *Exhibit "A 1"*

MARCH 8, 1933.

COMPTROLLER OF THE CURRENCY,
Treasury Department, Washington, D. C.

SIR: On the occasion of a recent visit to your office, Mr. Heber M. Wells, Treasurer of the United States Shipping Board Merchant Fleet Corporation, was referred to the Division of Insolvent National Banks for information concerning the deposit carried by the Merchant Fleet Corporation in the Commercial National Bank in Washington, D. C.

It was suggested that a letter be forwarded to you concerning this deposit, in order that there could be a mutual understanding of the facts, and that the proper steps to protect the government ests might be expeditiously determined.

This account has been maintained in the Commercial National Bank for a long period of years and includes the proceeds of numerous checks deposited therein and collections of notes placed with the bank for collection and credit to the account. In November 1931, pursuant to directions of the Shipping Board, the Commercial National Bank was required to furnish collateral security for the deposit. The security originally furnished was subsequently replaced by the following, which are presently held in custody of the Treasurer of the Merchant Fleet Corporation.

$200,000	U. S. Fourth Liberty Loan 4¼%		1933–38
100,000	U. S. Treasury Bonds 3½%		1948–49
75,000	U. S. " "	3⅜%	1941–43
25,000	U. S. " "	3¾%	1946–56

When the Commercial National Bank closed, on February 28, 1933, the amount on deposit in this account was $409,008.67, which exceeds the present market value of the collateral security by approximately $15,300.00.

For your information, there is attached hereto, copy of letter dated August 2, 1932, which sets forth the agreement with the Commercial National Bank concerning the collateral now held as security for this account.

From the discussion had with representatives of the Division of Insolvent National Banks, the rights of the Merchant Fleet Corporation as a secured depositor were definitely determined, provided there could be no doubt that the money on deposit consisted of public funds. As to this point; your attention is invited to the terms of the Independent Offices Appropriation Act, for the fiscal year 1933 and/or for preceding years, from which it will be observed that all funds of the Merchant Fleet Corporation are appropriated to the Shipping Board each year, being designated in the Appropriation Act under the heading "United States Shipping Board Shipping Fund." Several specific appropriations are made under this heading, including the following:

81 (a) The amount of operating funds on hand at the beginning of the fiscal year, not to exceed $50,000,000.

(b) An amount appropriated from funds in the United States Treasury.

(c) All amounts received during the fiscal year, except sales receipts.

(d) Authorization to use a certain portion of sales receipts to meet the expenses of liquidation.

(e) Interest earned on funds of the Corporation in banks.

Checks or notes deposited in the Commercial National Bank consist either of operating receipts, as covered by subparagraph (c) quoted above, or of collections of principal or interest on ship sales or other notes, which in all cases represent amounts due the Shipping Board from the sale of vessels or other assets. In this latter connection, it is pertinent to note that all vessels and other assets are held in the name of the Shipping Board, as provided by Section 4 of the Merchant Marine Act of 1920, and there can be no doubt that the Shipping Board is a government agency. All sales agreements covering vessels or other assets are executed in the name of the United States of America, by United States Shipping Board, acting by and through its agent, the United States Shipping Board Merchant Fleet Corporation.

While a portion of sales receipts are available to meet liquidation expenses each year, as provided in sub-paragraph (a) of the annual appropriation acts, as mentioned above, it should also be noted that Sections 10 and 11 of the Merchant Marine Act, 1930 (U. S. C., Title 46, Sec. 809) as amended by Sections 501 and 501, respectively, of the Merchant Marine Act of May 22, 1928, provide that sales receipts may be deposited in the Insurance Fund and in the Construction Loan Fund authorized to be maintained by the Shipping Board. All sales receipts, including those temporarily deposited in the Commercial National Bank, are ultimately used for one of these three purposes.

For these reasons, it is believed that there is no doubt but that the funds deposited in the Commercial National Bank, consisting either of operating receipts of the Merchant Fleet Corporation or sales receipts, as well as other funds of the Corporation, whether they be deposited in the United States Treasury or in banks, being all in the nature of appropriated funds, are public moneys.

Confirmation of this opinion is contained in a letter addressed to the United States Shipping Board by the Comptroller General of the United States under date of June 16, 1931. Photostat of this letter is attached hereto, from which the following should be noted:

82 "The vessels and other property in custody of the Board constitute property of the United States, controlled through its agent, the Merchant Fleet Corporation, and moneys derived from the business operations of the Fleet Corporation are moneys of and for the use of the United States * * *"

On March 15, 1933, interest will be due on U. S. Treasury 3⅜ and 3¾ bonds. The interest on bonds of these issues held by the Merchant Fleet Corporation as security for the account in the Commercial National Bank, together with accrued interest on the other securities similarly held will amount to approximately $6,000 on March 15, 1933.

It is requested that the Merchant Fleet Corporation be advised whether or not, in your opinion, it may dispose of the above mentioned collateral at such time as it considers appropriate, and whether as the interest coupons mature, or when the securities are sold, in-

terest payments may be applied as an offset to the deposit, in the same manner as the amount recovered on the securities themselves.

Assuming your answer to these inquiries to be in the affirmative, will you please also confirm our understanding that when our claim is filed with the Receiver of the Bank, the amount claimed will be the total amount on deposit at the time of closing, plus interest due thereon at the rate of 1% per annum computed on daily balances, without regard for amounts that may be realized from the disposition of the collateral security.

Another point on which your advice is desired concerns the last sentence in the second paragraph of the Commercial National Bank's letter of August 2, 1932, which reads as follows:

"In case of depreciation in the market value of said securities herewith pledged, additional securities shall be added as required by you."

In view of this statement, is the Receiver for the Bank in a position to furnish additional collateral if and when requested to do so by the Merchant Fleet Corporation to cover the difference between $400,000 and the present market value of the securities, which is approximately $393,735?"

Very truly yours,

(Signed) ELMER E. CROWLEY, *President.*

CDG:RD.

83 *Exhibit "A 2"*

JFA:eb.

MARCH 17, 1933.

Mr. ROBERT C. BALDWIN,
Receiver, Commercial National Bank,
Washington, D. C.

DEAR SIR: Receipt is acknowledged of your letters of March 7th and March 8th referring to the deposit balance of the United States Shipping Board, Merchant Fleet Corporation, Agent Deposit Account $264,125.05, and United States Shipping Board, Merchant Fleet Corporation, Agent Good Faith Deposit Account $144,883.62. There is attached for your information a copy of a letter dated March 8th sent the Comptroller of the Currency in this connection by Mr. Elmer E. Crowley, president of the Merchant Fleet Corporation. The enclosures to this letter are retained for our files but they are available for your examination at any time.

It appears that under date of November 19, 1931 these balances were secured by mortgage notes in the face amount of $1,158,377.08, pledged with the Federal Reserve Bank of Richmond as trustee. On August 3, 1932 United States Government obligations in the face amount of $400,000 were substituted for the mortgage notes pursuant to a resolution of the Board of Directors of your bank. You advise that there has been no change in the collateral since August 3rd, 1932, hence the possibility of any violation of Section 5242 U. S. R. S. seems to be eliminated.

National banking associations are without power to pledge assets to secure private deposits hence if the deposits in question can be classified as private funds it would be your duty as Receiver to move to recover the collateral in the Supreme Court of the District of

Columbia. Baltimore & Ohio Railroad v. Smith, 56 Fed. (2nd) 799; Texas & Pacific Railroad v. Pottorff, United States Circuit Court of Appeals, decided January 19, 1933. It seems clear that these deposits are not "deposits of public money by the United States" within the meaning of certain Federal statutes. However there are a line of authorities to the effect that public money consists of all money in the hands of a public officer in his public capacity without reference to the source or ultimate disposition.

Kiechofer v. United States, 19 App. D. C. 405
In Re Reiner, 122 Fed. 109
State v. McGraw, 240 Pac. 812
People v. Hamilton, 32 Pac. 526
Agoure v. Peck, 121 Pac. 706
Myers v. Board of Comm., 56 Pac. 11
Spratley v. Board, 43 Pac. 232
People v. Backus, 22 N. E. 759
People v. McGrath, 279 Ill. 550.

84 In view of these authorities and the Federal decisions fixing the status of the Merchant Fleet Corporation we are satisfied that the prospects of successfully attacking the pledge of assets for these funds would not warrant the expenditure necessary. Accordingly, you are authorized to advise the Merchant Fleet Corporation that you as Receiver will interpose no objection to the sale of the securities in the face amount of $400,000, through a recognized broker, the proceeds to be applied in payment of the deposit claims.

As you know a secured creditor of an insolvent National bank may prove and receive dividends upon the face of its claim as it stood at suspension without crediting the collateral or the collections therefor, subject to the proviso that dividends must cease when, from them and the collateral proceeds, the claim is paid as of suspension. Aldrich v. Chemical National Bank, 176 U. S. 618; Merrill v. National Bank, 173 U. S. 131; American Surety Co. v. DeCarle, 25 Fed. (2nd) 18. It follows that you should recognize the general claims of the Merchant Fleet Corporation for these deposit balances, with any interest due computed as of suspension and that the corporation should be paid in dividends, the deficiency between the net amount obtained from the collateral and the deposit claims computed as of suspension. Of course you as Receiver are without authority to furnish any additional collateral to the Merchant Fleet Corporation to secure the deficiency, as all of the assets of your trust, unpledged at suspension, are owned by your trust's general creditors.

Yours very truly,

(Signed) GIBBS LYONS, *Deputy Comptroller.*

85 *Exhibit "A 3"*

COMPTROLLER OF THE CURRENCY,
TREASURY DEPARTMENT,
Washington, March 17, 1933.

Mr. ELMER E. CROWLEY, *President,*
Merchant Fleet Corporation, Washington, D. C.

DEAR SIR: The adjustment of the deposit balances of the Merchant Fleet Corporation in the Commercial National Bank of Washington,

D. C. at suspension, discussed in your letter of March 8, 1933, will be made by Mr. Robert C. Baldwin, Receiver. There is attached hereto for your information a copy of a letter sent Mr. Baldwin today that should effect an adjustment in so far as the collateral proceeds are concerned. Mr. Baldwin will issue Receiver's certificates to the Merchant Fleet Corporation for the balances as of suspension and will pay dividends thereon, when paid general creditors, until the deficiency is paid in full.

Yours very truly,

(Signed) GIBBS LYONS, *Deputy Comptroller.*

Enclosure.

86 *Exhibit "A 4"*

APRIL 4, 1933.

The Honorable SECRETARY OF THE TREASURY,
Washington, D. C.

SIR: The United States Shipping Board Merchant Fleet Corporation holds as security for its account in the Commercial National Bank, the following Government obligations:

		Next interest coupons due
U. S. Liberty Bonds 4¼%	$200,000	4/15/33
" Treasury " 3½%	100,000	6/15/33
" " " 3⅜%	75,000	9/15/33
" " " 3¾%	25,000	9/15/33
Total	$400,000	

We have been advised by the Receiver of the Commercial National Bank that he will interpose no objection to the sale of these securities, the proceeds to be applied in payment of our deposit claims.

It is understood that the United States Treasury has facilities for disposing of the securities which are held as collateral for deposits of public funds, and it is requested, therefore, that you arrange for the disposition of the above mentioned bonds, the proceeds thereof, including accrued interest, to be credited to the United States Treasury account of Heber M. Wells, Treasurer, United States Shipping Board Merchant Fleet Corporation, symbol 93500. The Bonds in question have been delivered to the Division of Securities of the Office of the Treasurer of the United States, for safekeeping until liquidation, as requested herein, has been arranged.

It is requested that when this transaction has been completed, a report of the results thereof be forwarded to Heber M. Wells, Treasurer, United States Shipping Board Merchant Fleet Corporation, in order that he may file the required report with the Receiver of the Commercial National Bank, Washington, D. C.

Respectfully,

(Signed) H. I. Cone.
H. I. CONE, *Chairman.*

CDG:RD.

87 *Exhibit "A 5"*

COMMERCIAL NATIONAL BANK,
Washington, D. C., April 7, 1933.

Admiral HUTCHINSON I. CONE, *Chairman,*
United States Shipping Board Merchant Fleet Corporation,
Washington, D. C.

DEAR SIR: This has to do with the satisfaction of your account in The Commercial National Bank of Washington standing at $409,297.28 at suspension including accrued interest to that date.

To secure the above indebtedness you hold the following bonds:

Par value	Description	Today's prices	Value
$100,000	U. S. Treas. 3½% Bonds of 6/15/46-49	97 30/32	$97,937.50
75,000	U. S. Treas. 3 ¾% Bonds of 3/15/43	100 20/32	75,625.00
25,000	U. S. Treas. 3 ¾% Bonds of 3/15/46-56	102 16/32	25,675.00
200,000	4th Liberty Loan 4 ¼% Bonds of 10/15/33-38	101 27/32	203,687.57
			$402,925.07

You will see from the above total that your security shows $6,372.21 shortage to satisfy my deposit liability to you, and it will be necessary for you to file a general claim and obtain dividends to finally satisfy this deficiency.

The purpose of this letter is to get your approval of the redemption of $200,000.00 Fourth 4¼% Liberty Loan Bonds as above set forth by substituting $200,000.00 cash. This will create a somewhat additional deficiency due to the difference between par and the market price today of 101 27/32, and since this deficiency in either event would be taken care of by the first dividend paid by the Receiver on the claim, which you would necessarily have to file in either event, and since the $200,000.00 par value Fourth 4¼% Liberty Loan Bonds were borrowed from another institution and must be returned either through arrangements with you or buying them on the open market, it will be much simpler for the transaction to be handled this way and result in quite a saving to my trust.

The above situation has been taken up by the Comptroller of the Currency and the plan has his approval as well as that of the Receiver, and it is respectfully requested that your concurrence be lent in this matter. Inasmuch as this required quick attention, it is requested that you get the Receiver on the telephone as soon as you arrive at a conclusion, National 2680, and confirm the arrangements made then by letter.

Very truly yours,

(Sgd.) ROBT. C. BALDWIN, *Receiver.*

RCB/al.

88 *Exhibit "A 6"*

THE COMMERCIAL NATIONAL BANK,
Washington, D. C., April 7, 1933.

Admiral HUTCHINSON I. CONE, *Chairman,*
United States Shipping Board Merchant Fleet Corporation,
Washington, D. C.

DEAR SIR: Supplementing my letter of April 7th with respect to your deposit at suspension in various accounts at The Commercial

National Bank of Washington, I would like to also involve the second item in the list of bonds, viz:

$75,000.00 U. S. Treasury 3⅜% Bonds at 3/15/43

These also I should like to redeem in $75,000.00 cash along the lines set forth in my letter of April 7th.

Consequently, I should esteem your considering the foregoing in connection with my letter of April 7th.

Very truly yours,

(Sgd.) ROBT. C. BALDWIN, *Receiver.*

RCB/al.

89 *Exhibit "A 7"*

APRIL 8, 1933.

DEAR DR. BURGESS: I enclose with this, for your information, copy of a letter of April 4, 1933, from the Chairman of the United States Shipping Board, requesting the sale for their account of the following bonds:

Four Liberty 4¼'s	$200,000
Treasury 3⅛'s 1946–49	100,000
Treasury 3⅜'s 1941–43	75,000
Treasury 3¾'s 1946–56	25,000
Total	400,000

Since receipt of such request, the Board has telephoned requesting that the sale of $200,000 Fourth 4¼'s and of $75,000 Treasury 3⅜'s of 1941–43 be postponed until further advised. Accordingly, the Treasurer of the United States, who holds the bonds in safekeeping, is being instructed to cancel and deliver to the Register of the Treasury, for credit to the denominational exchange account of your bank, $100,000 Treasury 3⅛'s of 1946–49 and $25,000 Treasury 3¾'s of 1946–56.

When such delivery has been made, your bank will be advised, and you are thereupon authorized and directed to withdraw like face amounts of such Treasury bonds, as above-listed, from your denominational exchange stocks, and arrange for their sale on the market. You will please credit the Treasurer of the United States with the net proceeds of such sale for account of Heber M. Wells, Treasurer, United States Shipping Board Merchant Fleet Corporation, symbol 93500, issuing C/D therefor and transmitting duplicate copy thereof to the Commissioner of Accounts and Deposits, Treasury Department. As sales are made and amounts credited, kindly send statement thereof to my office for transmission to the United States Shipping Board.

Further advice will be given regarding the sale of Fourth 4¼'s and Treasury 3⅜'s of 1941–43, if later to be arranged.

Please acknowledge receipt.

Very truly yours,

(Signed) A. A. BALLANTINE,
Under Secretary of the Treasury.

DR. W. RANDOLPH BURGESS,
Deputy Governor, Federal Reserve Bank,
New York, N. Y.

Enclosure.
WSB:BOH.

90 *Exhibit "A 8"*

APRIL 12, 1933.

Honorable A. A. BALLANTINE,
Under Secretary of the Treasury, Washington, D. C.

SIR: With reference to my previous letters of April 4th and April 10th and your letter of April 8th, please be advised that the Shipping Board on April 11, 1933, authorized the sale of the following bonds to the Receiver of the Commercial National Bank, Washington, D. C., in exchange for cash in the amount of their face value:

Fourth 4¼% Liberty Loan Bonds with April 15, 1933 and subsequent coupons attached	$200,000
United States Treasury 3⅜% Bonds 1941–43, with September 15, 1933 and subsequent coupons attached	75,000

In accordance with arrangements that have been made with the Receiver of the Commercial National Bank, Washington, D. C., it is requested that this transaction be handled in the following manner:

Checks drawn by the Comptroller of the Currency on the Riggs National Bank, Washington, D. C., in the amounts of $200,000 and $75,000, respectively, will be deposited to the credit of the Treasurer of the United States Shipping Board Merchant Fleet Corporation, symbol 93500.

When collection on these checks has been completed, you are requested to notify the Treasurer of the Merchant Fleet Corporation accordingly, and you are authorized to forward the bonds for which payment has been made, to the Federal Reserve Bank, New York City, to be held by them in safekeeping for and subject to the order of Robert C. Baldwin, Receiver, Commercial National Bank, Washington, D. C., the safekeeping receipts to be delivered to him.

The transactions in regard to the two separate issues of bonds will probably be handled at different times but it is desired that the procedure be identical in each case.

Respectfully,

(Signed) H. I. Cone,
H. I. CONE, *Chairman.*

CDG: RD.

91 *Exhibit "A 9"*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, April 14, 1933.

A-44013. 153217.
Chairman UNITED STATES SHIPPING BOARD,
Washington, D. C.

SIR: The attention of this office has been invited to the action taken by the Shipping Board at a meeting held April 11, 1933, authorizing the sale *at par* to the Receiver of the Commercial National Bank of certain United States Bonds which were held by the Shipping Board for the Merchant Fleet Corporation as collateral security for deposits made in the bank by the Corporation. It appears that upon the closing of the Commercial National Bank the Merchant Fleet Corporation had on deposit with the bank $409,297.28, secured by Government bonds in the amount of $400,000. Thus there was $9,297.28 on deposit in excess of the face value of the bonds.

It appears the bonds were so furnished the Government pursuant to an agreement as evidenced by a certain letter of August 2, 1932, by the Commercial National Bank to the Fleet Corporation, in which it was stated:

"Now, therefore, as collateral security for the repayment of any or all of said funds now or hereafter deposited in said open account and for the payment of interest thereon, the undersigned has this day delivered to you the following securities:

$200,000.	U. S. Fourth 4¼s, 1933–38.
100,000.	U. S. Treasury 3⅛s, 6/146–49.
75,000.	U. S. Treasury 3⅜s, 3/15/41–43.
25,000.	U. S. Treasury 3¾s, 3/15/56.
$400,000.	

92 which securities, or any substitutes therefor, or any additions thereto, either the whole or any part thereof, the undersigned hereby authorized and empowered the United States Shipping Board Merchant Fleet Corporation, or its Treasurer, or other person authorized by resolution of the said United States Shipping Board Merchant Fleet Corporation, on the non-payment of any of said funds, to sell, at public or private sale, at any time without advertisement or notice to the undersigned, and at the option of the said United States Shipping Board Merchant Fleet Corporation, or its Treasurer, or other person authorized by resolution of the United States Shipping Board Merchant Fleet Corporation, and upon said sale the United States Shipping Board Merchant Fleet Corporation may purchase all or any part of said securities, freed and discharged of any equity of redemption. After deducting all proper costs and expenses, the residue of the proceeds of sale shall be applied to the payment of the amount due on said deposits, both principal and interest, returning the over-plus, if any, to the undersigned, and should a deficiency occur, the undersigned further promises and agrees to pay the same on demand.' In case of depreciation in the market value of said securities herewith pledged, additional securities shall be added as required by you.

"Of course, it is understood that so long as we are not in default, you shall clip from the bonds hereto attached interest coupons as they mature and deliver the same to us for collection, but if we are in default you are authorized to retain such coupons and collect the interest due thereon and apply the same as hereinbefore provided."

The Fourth 4¼ per cent Liberty Bonds and the United States Treasury 3⅜ per cent bonds, 1941–43, authorized to be sold at par, have a market price as of April 13, 1933, of approximately $102^{18}/_{32}$ and $101^{2}/_{32}$, respectively.

By now permitting the sale of the bonds at par, not only would there be a relinquishing of securities for less than their current value but certain contract rights obtained under the agreement with the Commercial National Bank dated August 2, 1932, providing for adequate protection and the right in the Merchant Fleet Corporation to sell the bonds and/or take accrued interest thereon in the event of the defalcation by the bank, would be surrendered. The rule is that the rights of the United States may not be surrendered in the absence

of statutory authority or adequate valuable consideration therefor, and it does not appear that such authority or consideration is present in the instant matter.

Accordingly it is requested that the Board give further consideration to the matter and this office be advised thereof.

Respectfully.

(Signed) J. R. McCARL,
Comptroller General of the United States.

93 *Exhibit "A 10"*

APRIL 18, 1933.

Honorable A. A. BALLENTINE,
Under Secretary of the Treasury, Washington, D. C.

SIR: This will confirm our verbal request to the Division of Accounts and Deposits, United States Treasury Department, on April 15, 1933, for the withholding of delivery of securities to the Receiver of the Commercial National Bank, Washington, D. C., as provided in my letter of April 12, 1933.

To meet an objection that has been raised by the Comptroller General of the United States to the proposed arrangement, the Receiver of the Commercial National Bank and representatives of the United States Shipping Board and the Comptroller of the Currency, have now arranged that the following bonds will be sold to the Receiver of the Commercial National Bank of Washington, for $281,695.31:

Fourth 4¼% Liberty Loan Bonds with October 15, 1933, and subsequent coupons attached	$200,000
U. S. Treasury 3⅜% Bonds with September 15, 1933, and subsequent coupons attached	75,000

Checks drawn by the Comptroller of the Currency on the Riggs National Bank of Washington, D. C., in the total amount of $281,695.31, have been delivered to the United States Shipping Board Merchant Fleet Corporation and have been deposited in the United States Treasury to the credit of symbol 93500, Heber M. Wells, Treasurer, United States Shipping Board Merchant Fleet Corporation, on certificates of deposit #11609 and #11625, in the amounts of $75,000 and $206,695.31, respectively.

Interest coupons on the Fourth Liberty Loan Bonds due April 15, 1933, have been detached and converted into cash by the Merchant Fleet Corporation, pursuant to the new agreement with the Receiver.

In view of the new arrangement, you are requested to ignore our previous request outlining the method of handling the disposition of the Fourth Liberty Loan Bonds and the Treasury 3⅜% Bonds and when collection of the checks totaling $281,695.31, covered by certificates of deposit numbers 11609 and 11625, has been completed, you are requested and authorized to forward the above listed Bonds to the Federal Reserve Bank, New York City, to be held by them in safekeeping for and subject to the order of the Comptroller of the Currency, for the benefit of depositors of the Commercial National Bank of Washington, Insolvent.

94 In my letter of April 4, 1933, acknowledged by yours of April 8, 1933, you were requested to arrange for the sale of United States Treasury 3⅛% Bonds, with a face value of $100,000, and United States Treasury 3¾% Bonds, with a face value of $25,000

We now desire to renew our request that these two issues be disposed of in accordance with original plans.

We regret the inconvenience that has been caused by the several changes which it has been necessary to make in the arrangements for the disposition of these securities, and trust that the procedure as now revised may be followed without further modification.

With thanks for your cooperation in this matter,

Respectfully,

(Signed) H. I. Cone,
H. I. Cone, *Chairman.*

CDG:RD.

[Copy]

Exhibit "A 11"

April 21, 1933.

Dr. W. Randolph Burgess,
Deputy Governor, Federal Reserve Bank, New York City.

Dear Mr. Burgess: The Treasurer of the United States is holding subject to the order of the United States Shipping Board the following securities:

$200,000 face amount of Fourth Liberty loan 4¼% Bonds, with October 15, 1933, and subsequent coupons attached.

75,000 face amount of 3⅜% Treasury Bonds of 1941-43, with September 15, 1933, and subsequent coupons attached.

In accordance with request in letter dated April 18, 1933, from the Chairman of the United States Shipping Board to the Secretary of the Treasury, the Treasurer of the United States has been instructed to cancel these bonds and deliver them to the Register of the Treasury, for credit to the denominational exchange account of your bank. Copy of the above mentioned letter enclosed herewith.

The Commissioner of the Public Debt will in due course authorize you to make delivery from denominational exchange account in accordance with usual procedure. When delivery has been made, your bank is requested to hold the bonds in safekeeping subject to the order of the Comptroller of the Currency, for the benefit of depositors of the Commercial National Bank of Washington, Insolvent. Safekeeping receipts should be transmitted to this office with letter of advice for attention of the Commissioner of Accounts and Deposits.

By direction of the Secretary.

Respectfully,

(Signed) James H. Douglas,
Assistant Secretary of the Treasury.

Enclosure.
O'D.SIM.
April 20, 1933.

96 *Exhibit "A 12"*

FEDERAL RESERVE BANK OF NEW YORK,
April 12, 1933.

DEAR MR. BALLANTINE: In accordance with instructions contained in your letter of April 8, 1933, we sold on April 11, for delivery today:

$100,000. par value United States 3⅛% Treasury Bonds of 1946-49, at 98 18/32 net	$98,562.50	
	1,015.63	
		$99,578.13
25,000. par value United States 3¼% Treasury Bonds of 1946-56, at 103 8/32 net	$25,612.50	
Accrued Interest	70.31	
		25,882.81

which amounts we have today credited to the Treasurer of the United States for account of Heber M. Wells, Treasurer, United States Shipping Board Merchant Fleet Corporation under symbol 93500.

We attach duplicate copies of Certificate of Deposit Form No. 6599 in support of these transactions, showing the principal and accrued interest separately.

Very truly yours,

W. B. MATTESON,
Assistant Deputy Governor.

Honorable A. A. BALLANTINE,
Under Secretary of the Treasury, Washington, D. C.

Enclosures (4).

97 *Exhibit "A 13"*

Tabulation prepared by Treasurer of United States Shipping Board Merchant Fleet Corporation showing disposition of proceeds of liquidation of bonds pledged as security by Commercial National Bank of Washington, D. C.:

Securities sold to Receiver, Commercial National Bank			$281,695.31
Securities sold by Federal Reserve Bank—New York			125,460.94
Interest Coupons:			
Deposited in U. S. Treasury		$1,734.24	
Cashed and deposited in U. S. Treasury		4,250.00	
			5,984.24
Total Proceeds of Liquidation			$413,140.49
Application of Proceeds:			
Good Faith Deposit Account:			
Balance February 27, 1933		$144,883.62	
Interest to Feb. 27, 1933		111.50	
" Feb. 28, 1933, to April 17, 1933		174.90	
Deposit Account:			
Balance February 27, 1933	$264,125.05		
Less adjustment March 29, 1933	943.54		
		263,181.51	
Interest to February 27, 1933		177.11	
" Feb. 28, 1933, to April 17, 1933		341.68	
Total			$408,870.32
Amount paid to Receiver, Commercial National Bank, April 27, 1933			$4,270.17

98 *Exhibit "B"*

Special Contract #8163

This indenture made the 16th day of April, 1923, between the United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under the laws of the District of Columbia, party of the first part, and the United States of America, party of the second part, witnesseth:

Whereas, by virtue of the Emergency Shipping Fund provisions of the Appropriation Act of Congress, approved June 15, 1917, the President of the United States was authorized and empowered to engage in the construction and operation of ships and shipping as more fully set forth in said Act, and the President was further authorized by said Act of Congress and other subsequent Acts of Congress to utilize the appropriations made by the said Congress from that time down to the present time for the purpose of carrying out the Emergency Shipping Fund provisions of the said Appropriation Act of June 15, 1917, and its supplements and amendments, and

Whereas, pursuant to the said Act of June 15, 1917, and its supplements and amendments, the powers of the President were duly delegated to the United States Shipping Board and/or United States Shipping Board Emergency Fleet Corporation and the said last two mentioned bodies, pursuant to the powers in them vested by the said Act of Congress and in pursuance of the said duty of carrying on the construction and operation of ships and shipping used the moneys of the United States so appropriated in the purchase of goods, chattels, bonds secured by mortgage, bonds, notes, shares of stock, securities, contracts, personal property, claims and choses in action, including accounts against divers persons for the payment of money and all personal property of every kind and description whatsoever, and

99 Whereas, the legal title to the said property above mentioned was taken and now stands in the name of the United States Shipping Board Emergency Fleet Corporation, party of the first part, but the said party of the first part has no beneficial ownership therein, but, on the contrary, the beneficial ownership in the same is, and always has been, in the United States of America since the same was so acquired by the party of the first part, and

Whereas, the United States Shipping Board, pursuant to the powers and duties under the said Acts hereinbefore referred to, has ordered and directed that the legal title to all of the said property should be conveyed and become vested in the United States of America, party of the second part, to whom the same really belongs, and the United States Shipping Board Emergency Fleet Corporation, acting in its own capacity and also by express direction of said United States Shipping Board, desires by this deed to carry out the directions of the said Act of Congress and the said direction of the United States Shipping Board.

Now, therefore, the party of the first part, in consideration of the premises and of the sum of One Dollar ($1.00), lawful money of the United States, paid by the party of the second part to the party of the first part, receipt of which is hereby acknowledged, has granted, bargained, sold, transferred, assigned and conveyed and by these

presents does grant, bargain, sell, transfer, assign and convey unto the party of the second part, its successors and assigns forever all the goods, chattels, bonds secured by mortgage, bonds, notes, shares of stock, contracts, securities, claims, personal property and choses in action, including accounts against divers persons for the payment of money and all personal property of every kind and description whatsoever, wherever the same may be situated, heretofore acquired by the party of the first part, and not heretofore disposed of by it, and now remaining under the disposition or control of the party of the first part.

To have and to hold the property hereinabove conveyed to the party of the second part, its successors and assigns forever. And the said party of the first part, its successors and assigns, do covenant and agree to and with the party of the second part, and its assigns, that it will, whenever requested so to do, make and execute any and all such further deeds of conveyance and other documents as may be required by the party of the second part and its assigns for the further assurance to the party of the second part and its assigns of the title to any and all of the said property hereinabove referred to.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officers the day and year first above written.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION.

[SEAL] By J. B. SMULL, *President.*

Attest:

CLIFFORD W. SMITH, *Secretary.*

DISTRICT OF COLUMBIA, *ss:*

On this 18th day of April, 1923, before me came J. B. Smull to me known, who, being by me duly sworn did depose and say that he resides in District of Columbia; that he is the President of the United States Shipping Board Emergency Fleet Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation; and that he signed his name thereto by like order.

[SEAL] CARL P. KREMER. *Notary Public,*
District of Columbia, United States of America.

My Commission expires Aug. 23, 1927.

No. 32887.

DISTRICT OF COLUMBIA, *ss:*

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Carl P. Kremer before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am

well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 19th day of April, A. D. 1928.

MORGAN H. BEACH, *Clerk.*
By CHAS. B. COFLIN, *Assistant Clerk.*

Proofed with the Original Duplicating Section.
MW/BC.

101 *Exhibit "C"*

United States Shipping Board, Washington

RESOLUTION ADOPTED BY THE UNITED STATES SHIPPING BOARD SEPTEMBER 30, 1921

Whereas, The Merchant Marine Act, 1920, provides that the power and authority thereby vested in the United States Shipping Board may be exercised either directly by the Board, or by it through the United States Shipping Board Emergency Fleet Corporation, except as therein otherwise specifically provided, and

Whereas, In the opinion of the Shipping Board, the executive and personnel organization of the Emergency Fleet Corporation has been completed to such a standard of efficiency as to make it desirable that the United States Shipping Board should exercise through the United States Shipping Board Emergency Fleet Corporation various administrative powers and functions, thus making it possible for the United States Shipping Board to devote its attention to study and determination of the broad and constructive questions of policy relating to the maintenance, development and encouragement of the American Merchant Marine, under the powers and duties imposed upon the United States Shipping Board by law,

Therefore, be it resolved, That it is the sense of the United States Shipping Board that its Chairman should retire as President, and that its members should retire as Trustees of the said United States Shipping Board Emergency Fleet Corporation, and that there should forthwith be elected a separate President and a separate Board of Trustees for the said United States Shipping Board Emergency Fleet Corporation; and

Be it further resolved, That the power and authority vested in the Shipping Board by the Merchant Marine Act, 1920, shall, until otherwise ordered by the Board, be exercised by it through the United States Shipping Board Emergency Fleet Corporation in the following matters, and to the extent and in the manner hereinafter provided:

(1) The operation, maintenance, repair and reconditioning of vessels provided that no established line shall be discontinued, or new line established, or allocation of passenger vessels made, without the approval of the United States Shipping Board.

(2) The completion or conclusion of any construction work upon vessels which has heretofore been begun or has been authorized by the United States Shipping Board.

(3) The sale of vessels (except to aliens) at such prices and on such terms and conditions as the United States Shipping Board may prescribe.

102 (4) The operation and sale of housing projects, real estate, railroad and other similar property, subject to confirmation by the United States Shipping Board before any final contract of sale is made.

(5) The operation and sale of dry docks; all sales to be subject to such terms and prices as may be established by the United States Shipping Board.

(6) The custody and sale of all other property and materials.

(7) All accounting for the United States Shipping Board Emergency Fleet Corporation.

(8) Insurance and matters pertaining to the same.

(9) The operation of all piers and pier facilities: provided that no pier or pier facilities shall be leased without prior authorization from the United States Shipping Board.

(10) The leasing and rental of offices, warehouses, docks and storage facilities.

(11) All matters incidental to any of the foregoing, including the execution of contracts, charters, bills of sale, leases, deeds and other instruments necessary or convenient to the exercise of the power and authority hereby conferred upon the United States Shipping Board Emergency Fleet Corporation; and

Be it further resolved, That an accurate record shall be made of the proceedings of every meeting of the United States Shipping Board Emergency Fleet Corporation and a summary thereof transmitted to the Chairman and each Commissioner of the United States Shipping Board, and that notices of meetings of the Board of Trustees of said Emergency Fleet Corporation be duly sent to each member of the United States Shipping Board; and

Be it further resolved, That the control of the United States Shipping Board Emergency Fleet Corporation shall remain with the United States Shipping Board, and that the President and each of the Trustees of the United States Shipping Board Emergency Fleet Corporation be and hereby are required to deposit with the Secretary of the United States Shipping Board their several resignations, for acceptance at the pleasure of the United States Shipping Board, and to deliver to the Secretary of the United States Shipping Board their several qualifying shares of stock in the United States Shipping Board Emergency Fleet Corporation, duly endorsed in blank for transfer.

103 *Exhibit "C-1"*

United States Shipping Board, Washington

RESOLUTION ADOPTED BY THE UNITED STATES SHIPPING BOARD JAN. 10, 1924

The resolution of the United States Shipping Board passed September 30th, 1921 is hereby amended to read as follows:

Whereas, The Merchant Marine Act, 1920, provides that the power and authority thereby vested in the United States Shipping Board may be exercised either directly by the Board, or by it through the

United States Shipping Board Emergency Fleet Corporation, except as therein otherwise specifically provided; and

Whereas, In the opinion of the Shipping Board, the executive and personnel organization of the Emergency Fleet Corporation is equipped to efficiently exercise through the United States Shipping Board Emergency Fleet Corporation various administrative powers and functions, thus making it possible for the United States Shipping Board to devote its attention to study and determination of the broad and constructive questions of policy relating to the maintenance, development, and encouragement of the American Merchant Marine, under the powers and duties imposed upon the United States Shipping Board by law.

Therefore, be it resolved, That it is the sense of the United States Shipping Board that neither its Chairman nor any member of the Board should hold any office of the Emergency Fleet Corporation, and that no member of any department of the Shipping Board should hold any office of the Emergency Fleet Corporation unless the Shipping Board and the Board of Trustees of the Emergency Fleet Corporation concur.

Be it further resolved, That the power and authority vested in the Shipping Board by the Merchant Marine Act, 1920, shall be exercised by it through the Emergency Fleet Corporation in the following matters, and to the extent and in the manner hereinafter provided:

1. The selection, employment, or removal of all officers and employees of the Emergency Fleet Corporation and their compensation shall be under the control of the Board of Trustees and/or officers of that corporation in the manner provided for in the By-Laws of said corporation, provided, however, that the salaries and other compensation of the officers and of the Trustees shall be subject to the approval of the Board; and provided further: the employment of counsel and all litigation shall remain under the control of the Shipping Board, which shall assign to the Emergency Fleet Corporation such attorneys as may be needed by the President of the Emergency Fleet Corporation for the proper conduct of its business.

104 2. The management, operation, maintenance, and repair of vessels; including ordinary re-conditioning of vessels.

3. The establishment and operation of lines and routes which the Shipping Board, under the powers conferred upon it by Section 7 of the Merchant Marine Act, 1920, has heretofore authorized and directed or may hereafter authorize and direct; no established line shall be discontinued, or new line established, or allocation of passenger vessels made, without the approval of the United States Shipping Board.

4. The completion or conclusion of any construction work upon vessels which has heretofore been begun or has been authorized by the United States Shipping Board.

5. The sale of vessels (except to aliens) at such prices and on such terms and conditions as the United States Shipping Board may prescribe or approve.

6. The operation and sale of housing projects, real estate, railroad and other similar property, subject to confirmation by the United States Shipping Board before any final contract of sale is made.

7. The operation and sale of dry docks; all sales at such prices and on such terms and conditions as the United States Shipping Board may prescribe or approve.

8. The custody and sale of all other property and materials.

9. All accounting for the Emergency Fleet Corporation.

10. The insurance of vessels and other property in its custody; and matters pertaining to insurance; subject, however, to the control and supervision of the Board, with respect to the placing of insurance.

11. The operation of piers and pier facilities owned or leased by the Shipping Board and at present used by its vessels; and the operation of such other piers and pier facilities as may be transferred to it by the Shipping Board.

12. The disbursement and expenditure of all moneys arising out of operations; and such other funds as may be allotted to it from appropriations heretofore made to the Shipping Board; or which may hereafter be made the Shipping Board; and also moneys arising from appropriations hereafter made by Congress for the exclusive use of the Emergency Fleet Corporation.

13. The leasing and rental of offices, warehouses, dock and storage facilities deemed essential by it for its business and for its terminal facilities; but no lease for a period exceeding one year shall be made without the consent of the Shipping Board.

105 14. The settlement, including payments or collections, of all matters arising out of the above-mentioned powers before or after the date of this resolution.

15. All matters incidental to any of the foregoing powers, including the execution of contracts, charters, bills of sale, leases and other instruments necessary or convenient to the exercise of such powers are hereby conferred upon the Emergency Fleet Corporation.

Be it further resolved, That an accurate record shall be made of the proceedings of every meeting of the Trustees of the Emergency Fleet Corporation and a summary thereof transmitted to the Chairman and each Commissioner of the Shipping Board.

Be it further resolved, That the voting power upon the stock and the control of the United States Shipping Board Emergency Fleet Corporation shall remain with the United States Shipping Board, according to law; and the President and each of the Trustees of the Emergency Fleet Corporation shall deliver to the Secretary of the Shipping Board their several qualifying shares of stock in the United States Shipping Board Emergency Fleet Corporation, duly endorsed in blank for transfer; and the officers of the Emergency Fleet Corporation shall deliver to the President of the Emergency Fleet Corporation their several resignations for acceptance at his pleasure; and the President and Trustees of the Emergency Fleet Corporation shall deliver to the Secretary of the Shipping Board their several resignations for acceptance at the pleasure of the Shipping Board.

Be it further resolved, That in passing this resolution the United States Shipping Board declares that it is its policy to delegate to the Emergency Fleet Corporation, all power, authority and control essential to the full and efficient operation by it of all lines at present operated or which may be hereafter authorized. All vessels now being operated are hereby allocated to the Emergency Fleet Corporation; and, other vessels of the Board will be allocated to it when reasonably required for the equipment of present lines or lines hereafter authorized. All vessels of the Shipping Board not in use, are also placed in the custody and care of the Emergency Fleet Corporation.

Be it further resolved, That nothing herein contained shall be construed as a transfer of title or ownership of vessels, docks, or other property, real or personal, belonging to the United States; the possession and control by the Emergency Fleet Corporation of any vessels or other property delivered to it under this resolution shall be solely that of an agent, with limited powers. All contracts, and agreements made by the United States Shipping Board Emergency Fleet Corporation shall clearly show that the same are contracts and agreements of the United States Shipping Board acting through the United States Shipping Board Emergency Fleet Corporation as its authorized agent.

Be it further resolved, The right and duty of the Shipping Board to exercise any and all powers of supervision and control vested in or imposed upon it by law remain in full force and effect.

Be it further resolved, That all resolutions, general or special orders or office memoranda of the United States Shipping Board heretofore passed, inconsistent with the resolution of September 30, 1921, as amended hereby, are repealed, in so far as they conflict with the provisions of this resolution.

Exhibit "D"

United States Shipping Board, Washington

RESOLUTION ADOPTED BY THE UNITED STATES SHIPPING BOARD DECEMBER 22, 1924

Whereas, it is the desire of the United States Shipping Board, as far as possible, to place the conduct of its shipping business on a basis approximating commercial precedent and practices, and

Whereas, it is the declared purpose of the Board that in the operation of ships and handling of government property by the Emergency Fleet Corporation, that the Emergency Fleet Corporation shall report to the Shipping Board as to a board of directors exercising the usual advisory capacity in the determination of broad policies and holding the management responsible for results, in the same manner as large business organizations function; and in order more clearly to define this relationship between the Shipping Board and the Emergency Fleet Corporation in line with the Board's desire as above expressed.

Therefore be it resolved, that the resolution of the United States Shipping Board passed September 30, 1921, as amended January 10th, 1924, be and the same is hereby amended to read as follows:

Whereas, The Merchant Marine Act, 1920, provides that the power and authority thereby vested in the United States Shipping Board may be exercised either directly by the Board, or by it through the United States Shipping Board Emergency Fleet Corporation, except as therein otherwise specifically provided, and

Whereas, In the opinion of the Shipping Board, the executive and personnel organization of the Emergency Fleet Corporation is equipped to efficiently exercise through the United States Shipping Board Emergency Fleet Corporation various administrative powers and functions, thus making it possible for the United States Shipping Board to devote its attention to study and determination of the broad and constructive questions of policy relating to the maintenance, development and encouragement of the American Merchant Marine,

under the powers and duties imposed upon the United States Shipping Board by law.

Therefore be it resolved, That it is the sense of the United States Shipping Board that neither its Chairman nor any member of the Board should hold any office of the Emergency Fleet Corporation, and that no member of any department of the Shipping
108 Board should hold any office of the Emergency Fleet Corporation unless the Shipping Board and the Board of Trustees of the Emergency Fleet Corporation concur.

Be it further resolved, That the power and authority vested in the Shipping Board by the Merchant Marine Act, 1920, shall be exercised by it through the Emergency Fleet Corporation in the following matters, and to the extent and in the manner hereinafter provided:

1. The selection, employment, or removal of all officers and employees of the Emergency Fleet Corporation and their compensation shall be under the control of the Board of Trustees and/or officers of that corporation in the manner provided for in the By-Laws of said corporation, provided, however, that the salaries and other compensation of the officers and of the Trustees shall be subject to the approval of the Board, and, provided further, that the selection, employment, or removal of such attorneys as are engaged in handling construction claims or litigation arising from the same shall be subject to the approval of the Board.

2. The management, operation, maintenance, and repair of vessels.

3. In accordance with the provisions of Section 7 of the Merchant Marine Act, 1920, the Shipping Board will determine the trade routes to be served. The Emergency Fleet Corporation will make such disposition and allocation of the vessels to serve these routes as will insure efficient and economical operations.

4. The completion or conclusion of any construction or reconditioning work upon vessels which has heretofore been or may be authorized by the United States Shipping Board.

5. The sale of vessels on terms and conditions laid down by the Board and at such prices as the Board approves.

6. The operation and sale of housing projects, real estate, railroad, and other similar property as approved by the Board.

7. The operation and sale of dry docks as approved by the Board.

8. The custody and sale of all other property and materials.

9. All accounting for the Emergency Fleet Corporation.

10. The insurance of vessels and other property in its custody, and matters pertaining to such insurance.

11. The management and physical operation of piers and pier warehouses and terminal facilities owned by or assigned to the Shipping Board.

109 12. The leasing and rental of offices, warehouses, docks, and storage facilities deemed essential by it for its business and for its terminal facilities.

13. The disbursement and expenditure of all moneys arising out of operations, or otherwise in connection with the delegated powers; also moneys arising from appropriations heretofore or hereafter made by Congress for the use and expense of the Emergency Fleet Corporation, as allotted by the Shipping Board, subject to the limitations of any or all acts of Congress pertaining thereto.

14. The settlement, including payments or collections, of all matters arising out of the above mentioned powers before or after the date of this resolution.

15. All matters incidental to any of the foregoing powers, including the negotiation, preparation and execution of contracts, charters, bills of sale, leases, operating agreements and other instruments necessary or convenient to the exercise of such powers are hereby conferred upon the Emergency Fleet Corporation.

Be it further resolved, That an accurate record shall be made of the proceedings of every meeting of the Trustees of the Emergency Fleet Corporation and a summary thereof be transmitted to the Chairman and each Commissioner of the Shipping Board.

Be it further resolved, That the voting power upon the stock and the control of the United States Shipping Board Emergency Fleet Corporation shall remain with the United States Shipping Board, according to law; and the President and each of the Trustees of the Emergency Fleet Corporation shall deliver to the Secretary of the Shipping Board their several qualifying shares of stock in the United States Shipping Board Emergency Fleet Corporation, duly endorsed in blank for transfer; and the officers of the Emergency Fleet Corporation shall deliver to the President of the Emergency Fleet Corporation their several resignations for acceptance at his pleasure; and the President and Trustees of the Emergency Fleet Corporation shall deliver to the Secretary of the Shipping Board their several resignations for acceptance at the pleasure of the Shipping Board.

Be it further resolved, That in passing this resolution the United States Shipping Board declares that it is its policy to delegate to the Emergency Fleet Corporation, all power, authority and control essential to the full and efficient operation by it of all lines at present operated or which may be hereafter authorized, and the full performance of all powers and authority hereby delegated. All vessels, whether active or inactive, are hereby placed in the custody and care of the Emergency Fleet Corporation.

Be it further resolved, That nothing herein contained shall be construed as a transfer of title or ownership of vessels, docks or other property, real or personal, belonging to the United States; the possession and control by the Emergency Fleet Corporation of any vessels or other property delivered to it under this resolution shall be solely that of an agent, with limited powers. All contracts, and agreements made by the United States Shipping Board Emergency Fleet Corporation shall clearly show that the same are contracts and agreements of the United States Shipping Board acting through the United States Shipping Board Emergency Fleet Corporation as its authorized agent.

Be it further resolved, The right and duty of the Shipping Board to exercise any and all powers of supervision and control vested in or imposed upon it by law remain in full force and effect.

Be it further resolved, That all resolutions, general or special orders or office memoranda of the United States Shipping Board heretofore passed, inconsistent with the resolution of January 10, 1924 as amended hereby, are repealed; insofar as they conflict with the provisions of this resolution.

111 *Exhibit "E"*

United States Shipping Board, Washington

RESOLUTION ADOPTED BY THE UNITED STATES SHIPPING BOARD ON OCTOBER 1, 1925

Whereas, in the judgment of this Board, the powers at present exercised by it through the Emergency Fleet Corporation, should be exercised under a more definite and direct supervision of this Board than has been practicable under Resolutions at present in force;

Be it resolved, the Resolutions of the United States Shipping Board adopted by it on January 10, 1924 and December 22, 1924, respectively, each of which confers powers on the Emergency Fleet Corporation and amends a Resolution of this Board dated September 30, 1921, be and each of them is hereby repealed; Provided, however, all action heretofore taken by the Emergency Fleet Corporation pursuant to and within the limitations of the powers therein granted, shall be given full force and effect.

Be it further resolved, that all that part of the Resolution of the United States Shipping Board adopted September 30, 1921, set forth below, be and the same is hereby revived and shall henceforth, until the further order of this Board, have full force and effect; the part thus re-adopted being that part reading as follows:

"Be it further resolved, that the power and authority vested in the Shipping Board by the Merchant Marine Act, 1920, shall until otherwise ordered by the Board, be exercised by it through the United States Shipping Board Emergency Fleet Corporation in the following matters, and to the extent and in the manner hereinafter provided:

(1) The operation, maintenance, repair and reconditioning of vessels, provided that no established line shall be discontinued, or new line established, or allocation of passenger vessels made, without the approval of the United States Shipping Board.

112 (2) The completion or conclusion of any construction work upon vessels which has heretofore been begun or has been authorized by the United States Shipping Board.

(3) The sale of vessels (except to aliens) at such prices and on such terms and conditions as the United States Shipping Board may prescribe.

(4) The operation and sale of housing projects, real estate, railroad and other similar property, subject to confirmation by the United States Shipping Board before any final contract of sale is made.

(5) The operation and sale of dry docks; all sales to be subject to such terms and prices as may be established by the United States Shipping Board.

(6) The custody and sale of all other property and materials.

(7) All accounting for the United States Shipping Board Emergency Fleet Corporation.

(8) Insurance and matters pertaining to the same.

(9) The operation of all piers and pier facilities; provided that no pier or pier facilities shall be leased without prior authorization from the United States Shipping Board.

(10) The leasing and rental of offices, warehouses, docks and storage facilities.

(11) All matters incidental to any of the foregoing, including the execution of contracts, charters, bills of sale, leases, deeds and other instruments necessary or convenient to the exercise of the power and authority hereby conferred upon the United States Shipping Board Emergency Fleet Corporation; and

Be it further resolved, That an accurate record shall be made of the proceedings of every meeting of the United States Shipping Board Emergency Fleet Corporation and a summary thereof transmitted to the Chairman and each Commissioner of the United States Shipping Board, and that notices of meetings of the Board of Trustees of said Emergency Fleet Corporation be duly sent to each member of the United States Shipping Board; and

113 Be it further resolved, that the control of the United States Shipping Board Emergency Fleet Corporation shall remain with the United States Shipping Board, and that the President and each of the Trustees of the United States Shipping Board Emergency Fleet Corporation be and hereby are required to deposit with the Secretary of the United States Shipping Board their several resignations, for acceptance at the pleasure of the United States Shipping Board, and to deliver to the Secretary of the United States Shipping Board their several qualifying shares of stock in the United States Shipping Board Emergency Fleet Corporation, duly endorsed in blank for transfer."

Be it further resolved, this Resolution shall be effective from the time of its passage, and the Secretary is directed to deliver at once a certified copy thereof to the office of the President of the Emergency Fleet Corporation, and henceforth the activities of that Corporation shall be based exclusively upon and within its provisions.

114 *Exhibit "E-1"*

THE COMMERCIAL NATIONAL BANK OF WASHINGTON.
Washington, D. C., December 30, 1931.

HON. HEBER M. WELLS, *Treasurer,*
United States Shipping Board Merchant Fleet Corporation,
Washington, D. C.

DEAR SIR: We have as you know been paying interest at the rate of 2½% per annum for some time on the balance you have been carrying with us.

On two occasions in the past member and associate member banks of the Washington, D. C., Clearing House Association reduced the rate of interest paid upon all accounts, both demand and time, but the question of any reduction on public money deposits was left optional with the members of the Association and, appreciating the very splendid account you have always carried with us, we did not feel that we cared to ask you to accept any reduction at the time, hoping that the generally low interest rates prevailing might stiffen but these rates continue at only slightly above the low point touched in a number of years and we would like, if agreeable to you, to pay

interest on your account at the rate of 1% per annum, effective January 1, 1932.

Awaiting your reply, we remain,

Very truly yours,

(Sgd) L. A. Slaughter,
L. A. Slaughter, *Vice President.*

LAS/em.

115 *Exhibit "F"*

The Commercial National Bank of Washington,
Washington, D. C., July 20, 1932.

Gov. Heber M. Wells,
Treasurer, United States Shipping Board
Merchant Fleet Corporation,
Room 2825 Munitions Building, Washington, D. C.

Dear Governor Wells: We are working on a plan whereby we expect to tender you United States Government bonds or Treasury notes as security for your deposit with us in exchange for the first deed of trust notes you now have secured separately on three pieces of real estate.

Will you please advise us if the substitution referred to will be acceptable to you. We may be prepared to make the exchange at any time and would like to close the transaction without delay.

With kind regards,

Cordially,

(Sgd.) L. A. Slaughter,
L. A. Slaughter, *Vice President.*

LAS/em.

116 *Exhibit "G"*

Commercial National Bank,
Washington, D. C., July 20th, 1932.

President, Merchant Fleet Corporation,
United States Shipping Board:

The Commercial National Bank of Washington, D. C., by letter of July 20th, 1932, addressed to the Treasurer of the Merchant Fleet Corporation, has asked permission to deposit United States Government bonds, or Treasury notes, as security for the deposits of Shipping Board funds now entrusted to that bank instead of the First Deed of Trust notes which we now have in our possession as security for said funds.

The amount of the deposit since the First Deed of Trust notes were accepted has been reduced to $400,000, while the bank estimates that the approximate value of the three pieces of real estate is in excess of $1,600,000.

To agree to the substitution referred to will place the Commercial National Bank of Washington, D. C., in line with the class of security heretofore accepted from other depositories, namely, Government bonds, so that it is considered that the change will be altogether advantageous.

I, therefore, recommend that the Treasurer be authorized to close the aforesaid transaction.

Elmer E. Crowley, *President.*

HWW: rh.

117 *Exhibit "H"*

"Whereas, by an agreement dated the 19th day of November 1931, this Bank pledged with the United States Shipping Board Merchant Fleet Corporation certain securities consisting of real estate notes to secure the prompt payment on demand in writing of any and all funds then on deposit or thereafter deposited to the credit of said United States Shipping Board Merchant Fleet Corporation with this Bank, and

"Whereas, said agreement provides for the substitution of securities to be held subject to the terms of said agreement,

"Now, therefore, be it resolved, that the President, any Vice President or the Cashier of this Bank request the United States Shipping Board Merchant Fleet Corporation to permit this Bank to substitute at this time and in the future from time to time as collateral security to be held under the terms and conditions of said agreement, obligations of the United States or other securities acceptable to said United States Shipping Board Merchant Fleet Corporation, and that said officers of this Bank be authorized to deliver the securities so to be substituted to said United States Shipping Board Merchant Fleet Corporation."

I hereby certify that the above resolution was duly adopted at a regular meeting of the Board of Directors of The Commercial National Bank of Washington held on the second day of August 1932, and appears upon the minutes of said meeting.

[SEAL] (Signed) F. H. Cox, *Cashier,*
The Commercial National Bank of Washington.

118 *Exhibit "I"*

THE COMMERCIAL NATIONAL BANK OF WASHINGTON,
Washington, D. C., August 2, 1932.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION,
Washington, D. C.

DEAR SIRS: Whereas you have deposited with the undersigned certain funds of your Corporation on open account, on which we have agreed, under separate instrument, to pay certain interest, and will, from time to time, by check or draft, draw on said funds and withdraw parts or the whole thereof, and may, from time to time hereafter, deposit other funds of your Corporation in said open account.

Now, therefore, as collateral security for the repayment of any or all of said funds now or hereafter deposited in said open account and for the payment of interest thereon, the undersigned has this day delivered to you the following securities:

$200,000	U. S. Fourth 4¼s, 1933–38.
100,000	U. S. Treasury 3⅛s, 6/1/46–49.
75,000	U. S. Treasury 3⅝s, 3/15/41–43.
25,000	U. S. Treasury 3¾s, 3/15/56.
$400,000	

which securities or any substitutes therefor, or any additions thereto, either the whole or any part thereof, the undersigned hereby authorizes and empowers the United States Shipping Board Merchant Fleet Corporation, or its Treasurer, or other person authorized by resolu-

tion of the said United States Shipping Board Merchant Fleet Corporation, on the non-payment of any of said funds, to sell, at public or private sale, at any time without advertisement or notice to the undersigned, and at the option of the said United States Shipping Board Merchant Fleet Corporation, or its Treasurer, or other person authorized by resolution of the United States Shipping Board Merchant Fleet Corporation, and upon such sale the United States Shipping Board Merchant Fleet Corporation may purchase all or any part of said securities, freed and discharged of any equity of redemption. After deducting all proper costs and expenses, the residue of the proceeds of sale shall be applied to the payment of the amount due on said deposits, both principal and interest, returning the over-plus, if any, to the undersigned, and should a deficiency occur, the undersigned further promises and agrees to pay the same on demand. In case of depreciation in the market value of said securities herewith pledged, additional securities shall be added as required by you.

Of course, it is understood that so long as we are not in default, you shall clip from the bonds hereto attached interest coupons as they mature and deliver the same to us for collection, but if we are in default you are authorized to retain such coupons and collect the interest due thereon and apply the same as hereinbefore provided.

Done by authority of the Board of Directors of this Bank by resolution adopted August 2, 1932, copy of which is herewith submitted.

THE COMMERCIAL NATIONAL BANK OF WASHINGTON.

(Signed) By L. A. Slaughter,
L. A. SLAUGHTER, *Vice President.*

LAS/em.

119

Exhibit "J"

THE COMMERCIAL NATIONAL BANK OF WASHINGTON,
Washington, D. C., August 3, 1932.

Hon. HEBER M. WELLS, *Treasurer,*
United States Shipping Board Merchant Fleet Corporation, Washington, D. C.

DEAR SIR: Under an agreement dated November 19, 1931, between your Corporation and this Bank, we pledged with you first mortgage real estate notes aggregating $1,858,377.08, which notes we now wish to withdraw and substitute in place therefor the following United States Government obligations:

$200,000	U. S. Fourth 4¼s, 1933–38.
100,000	U. S. Treasury 3⅛s, 6/1/46–49.
75,000	U. S. Treasury 3⅛s, 3/15/41–43.
25,000	U. S. Treasury, 3¼s, 3/15/56.
$400,000	

The notes to be released you sent, at our request, to the Federal Reserve Bank of Richmond, in trust for your account. Will you please advise said Bank to release the said notes to us, making them subject to our instructions, when the Federal Reserve Bank is prepared to send to you the United States Government obligations

referred to above, which collateral you are to continue to hold as security for repayment of any funds belonging to your Corporation now on deposit or to be hereafter deposited with us.

A certified copy of resolution adopted at a regular meeting of our Board of Directors held August 2, covering this exchange, is enclosed herewith, together with separate pledge agreement addressed to your Corporation, the execution of which was approved by our Board of Directors on yesterday.

Very truly yours,

(Signed) L. A. Slaughter,
L. A. Slaughter, *Vice President.*

LAS/em.
Enclosures.

120 *Exhibit "K"*

Tabulation prepared by treasurer of United States Shipping Board Merchant Fleet Corporation showing deposits in Commercial National Bank of Washington, by months, November 19, 1931, to February 27, 1933, inc.

Month	Agent, deposit account	Agent, good faith deposit account
Balance November 18, 1931	$643,639.82	$64,681.25
Deposits:		
Nov. 19 to 30, 1931	46,609.88	20,023.63
December 1931	175,093.55	3,522.32
January 1932	164,769.25	28,239.11
February 1932	202,452.23	
March 1932	133,972.29	2,500.00
April 1932	144,436.41	63,200.00
May 1932	230,219.54	2,750.00
June 1932	90,615.55	1,535.94
July 1932	76,567.45	315.80
August 1932	69,420.73	1,227.01
September 1932	117,518.98	28,562.76
October 1932	132,111.65	1,377.31
November 1932	111,747.35	30.00
December 1932	101,133.44	12,912.20
January 1933	110,184.43	1,223.50
February 1-27, 1933	63,744.06	3,469.02
Total deposits	1,970,656.79	170,888.60

121 *Exhibit "L"*

JANUARY 26, 1923.

JAMES B. REYNOLDS, Esquire,
Vice-President, The Commercial National Bank,
Washington, D. C.

DEAR SIR: Referring to Treasury letter of January 18, 1923, the Treasurer of the United States has advised this office of the receipt of $5,000 4¼% Fourth Liberty Loan Bonds, forwarded by your bank as security for funds to be maintained therewith to the official credit of the United States Courts and their officers. Accordingly, by virtue of the authority vested in the Secretary of the Treasury by Section 5153 of the Revised Statutes of the United States, the Commercial National Bank has been designated a limited depositary of public moneys with authority to accept not to exceed $5,000 of deposits made by the United States Courts and their officers for credit in their

official checking accounts. Under this designation your bank is authorized to accept no deposits whatsoever for credit in the Treasurer's General Account.

The customary receipt for the collateral deposited will be forwarded to you by the Treasurer of the United States.

Treasury regulations governing limited depositaries of public moneys require the payment of 2% interest on daily balances carried on the books of such depositaries to the credit of the official checking accounts of the United States Courts and their officers, that these accounts be collaterally secured in the maximum amount at all times, and that these accounts be reported on Form 7 to the Office of the Secretary of the Treasury, Division of Deposits, on Saturday of each week in the manner indicated on the enclosed specimen copy, and on Form 18 to the Treasurer of the United States, Division of General Accounts, on Saturday of each week and on the last day of the month. The necessary supply of forms to be used by your bank in rendering reports to the Department has been forwarded under separate cover.

122 If at any time in the future the funds on deposit with your bank to the credit of the official checking accounts of the United States Courts and their officers exceed $5,000, the Treasury, without further advice from this office, will expect your bank to comply with the instructions as printed on the reverse of Form 7, by forwarding to the Treasurer of the United States additional securities of the classes outlined in paragraph 31 of Department Circular No. 176, taken at the rates therein provided of a collateral value at least equal to all funds on deposit with your bank to the credit of the official checking accounts of the United States Courts and their officers.

Your attention is especially called to paragraphs 2, 30, 31, 32, and 33 of Department Circular No. 176, excerpts from which are enclosed herewith, which indicate the requirements of the Department with regard to handling the accounts of the United States Courts and their officers.

By direction of the Secretary:

Very truly yours,

(Signed) E. D. Batchelder,
E. D. Batchelder,
Chief, Division of Deposits.

(2 Enclosures.)
CHP: w.b.

123 *Answer of Defendant Inland Waterways Corporation*

Filed September 21, 1935

* * * * * * * *

Now comes the Inland Waterways Corporation, named a defendant in the above-entitled cause, and for answer to the bill of complaint herein filed, answers and says:

1-9. This defendant admits the allegations contained in paragraphs numbered 1 to 9, inclusive, of the said bill of complaint, except the allegation in paragraph numbered 3, that the United States Shipping Board Merchant Fleet Corporation is doing business in the District

of Columbia, as to which it avers that it is without knowledge and information as to the truth thereof; and except the allegation
124 in paragraph numbered 5, as to the residence of defendant Flint, which it is advised is in the State of Mayland and not the District of Columbia as alleged.

10. This defendant admits the allegations of fact contained in sub-paragraph 1 of paragraph numbered 10 of the said bill of complaint, (1) except the allegation in sub-paragraph 1 that additional deposits were made in the savings account, as to which it says that the first deposit was the only deposit made therein. (2) It admits the allegations of fact contained in sub-paragraphs 2 to 5 inclusive, except that in respect to the securities referred to in sub-paragraph 2 it avers that those enumerated in Exhibit "A" to the Bill were not the only bonds and securities pledged. As to the other allegations of said Paragraph 10, this defendant submits that they consist of conclusions of law, to which it is not required to make answer; nevertheless, this defendant denies the same and particularly denies that the pledge of securities made by the Commercial National Bank to this defendant was unlawful and illegal as alleged in sub-paragraph 2; denies that there was no authority or capacity in said Commercial National Bank to pledge the said securities and denies that said securities (bonds) became and were a trust and were held as such by this defendant for the benefit of said bank, its depositors, creditors and stockholders, as alleged in subparagraph 3; denies that the plaintiff in redeeming a portion of the said pledged securities, as specified, acted illegally or under mistake of law and denies that the payment for the redemption of said securities of the sum specified was unlawful and erroneous and, further, it denies that such payment constituted a trust fund for the benefit of the depositors, creditors and stockholders of the said bank, as alleged in sub-paragraph 4. Furthermore, this defendant avers that if as alleged in said sub-paragraph, the plaintiff in redeeming said securities and in making the payment therefor, acted "under mistake of law", then there can be no recovery of said payment in or by this suit. This defendant also denies that the sale of the other pledged securities by it was illegal and without authority of law and denies that the proceeds of such sale became or were charged with a trust for the benefit of the depositors, creditors and stockholders of said bank, as alleged in sub-paragraph 5.

Further answering said paragraph numbered 10, this de-
125 fendant avers that the said deposits made by this defendant in the Commercial National Bank were made pursuant to express agreements entered into prior to the intial deposits and the opening of the savings deposit account and the checking account, between duly authorized officials of the said bank and officers of this defendant, whereby it was agreed that in consideration of the deposits to be made by this defendant, the Bank would deposit in the Federal Reserve Bank at Richmond, Virginia, subject to this defendant's order and control, securities to safeguard said deposits; that the said securities were deposited and made subject to this defendant's order and control and the deposit accounts were thereupon opened. Further, that after the closing of the said Commercial National Bank, and after the plaintiff had entered upon his duties as Receiver thereof, and on April 7, 1933, the plaintiff as such Receiver proposed

to this defendant by letter of that date that $245,000 par value United States Fourth 4¼ per cent Liberty Loan Bonds, said bonds being a part of the said securities, "be replaced with $245,000. cash" and requested this defendant's approval thereof and of the release of the said bonds; that said approval was given, the said bonds were delivered to plaintiff and the said payment of $245,000. was made to this defendant; that thereafter and by letter of April 20, 1933, the plaintiff as such Receiver informed this defendant that as such Receiver he would interpose no objection to the sale by this defendant, through recognized brokers, of $255,000. par value United States Treasury Bonds, said bonds being the remaining securities pledged by the said Commercial National Bank. Further, that the action of plaintiff in making the said cash payment in exchange for the specified securities and in agreeing to and approving the sale of the other securities by this defendant, was taken with the knowl-
126 edge, sanction and approval of the Comptroller of the Currency.

This defendant therefore avers that even if, as alleged, the pledge and deposit of the said securities by the Commercial National Bank was originally unlawful and illegal and without authority of law, nevertheless, having, more than two years prior to the institution of this suit, proposed and effectuated an exchange of a portion of the pledged securities, and having likewise more than two years prior to the institution of this suit, consented to and authorized the sale of the balance of said securities, the plaintiff is in pari delicto, with this defendant in respect to this transaction, and cannot maintain this suit, and comes into equity without clean hands.

Further answering paragraph 10, this defendant avers that the demanding of security for the funds of the corporation was pursuant to its by-laws, promulgated on August 7, 1924 by the Secretary of War. Under said by-laws the Secretary-Treasurer of the corporation was named an accountable officer, and his duties specified thus:

"It shall be his duty to collect, receive, and hold the moneys, notes, bonds, certificates of stock, and other evidences of value and security of the Corporation, and deposit them in such depositaries under such conditions as may be approved by the Secretary of War."

The Secretary of War approved the deposit of the funds of the defendant in the Commercial National Bank, and required the Secretary-Treasurer to secure the deposits of funds by the pledging of bonds for the safekeeping of the funds in question, in accordance with the provisions of the by-laws aforementioned.

That such action in requiring security and action by the Commer-
cial National Bank in giving it was in accordance with a prac-
127 tice and custom which had prevailed for many years in respect of deposits of other funds which were under the control of or administered by other departments or agencies, or officers of the United States, or with respect to which such departments, agencies or officers had or performed any duties or functions and such practice and custom had continued without objection or question until after the closing of the various banks in which such funds were deposited; that such practice and custom were known to the respective Comptrollers of the Currency during the period since its adoption and up to and subsequent to the purchase and sale of the securities herein involved; that no objection thereto was ever raised or made by any

of the said Comptrollers and said practice and custom aforesaid were recognized and received and had the approval and sanction of said officials.

Further answering, this defendant avers that prior to its creation by the Act of June 3, 1924, 43 Stat. 360, 49 U. S. Code, section 151, and during the period of Federal control, the President of the United States, through the Railroad Administration, acting as his agent or designate, acquired by purchase, for the purpose of establishing a barge line on the Mississippi River as an aid in the national defense, all available floating equipment in that region. Such acquisition was authorized under the fourth paragraph of section 6 of the Federal Control Act of March 21, 1918, 40 Stat. 451, which provided that from the revolving fund created by section 6 of that Act, the President might expend such an amount as he might deem necessary or desirable for the utilization and operation of canals, or for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities on the inland, canal, and coastwise waterways and that in the operation and use of such facilities, might create or employ such agencies and enter into such contracts and agreements as he should deem in the public interest.

128 The equipment thus purchased remained under the control of the Railroad Administration until the effective date of the Transportation Act of 1920, when it was transferred to the Secretary of War by section 201 of that Act (U. S. Code, Title 40, section 141) which provided so far as material here:

"Sec. 201. On the termination of Federal control, as provided in section 200, all boats, barges, tugs, and other transportation facilities, on the inland, canal, and coastwise waterways * * * acquired by the United States in pursuance of the fourth paragraph of section 6 of the Federal Control Act * * * are transferred to the Secretary of War, who shall operate or cause to be operated such transportation facilities so that the lines of inland water transportation established by or through the President during Federal control shall be continued, and assume and carry out all contracts, and agreements, in relation thereto entered into by or through the President. * * * All payments under the terms of such contracts * * * shall be made out of moneys available under the provisions. * * * Money required for such payments shall from time to time be transferred to the Secretary of War, as required for payment under the terms of such contract.

"(b) All other payments after such transfer in connection with the construction, utilization and operation of any such transportation facilities * * * shall be made by the Secretary of War out of funds now or hereafter made available."

Said section 201 was amended by the Act of March 4, 1921, 41 Stat. 1392 to enlarge the power of the Secretary of War in certain respects. In and by that act there was appropriated $1,225,000 "for additional expense incurred in the operation of boats, barges, tugs, and other transportation facilities on the inland, canal, and coastwise waterways acquired by the United States in pursuance of the fourth paragraph of section 6 of the Federal Control Act of March 21, 1918, and operated in pursuance of section 201 of the Transportation Act, * * *."

Section 500 of the Transportation Act, 1920, declared and provided as follows:

"It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States and to foster and preserve in full vigor both rail and water transportation.

"It shall be the duty of the Secretary of War, with the object of promoting, encouraging, and developing inland waterway
129 transportation facilities in connection with the commerce of the United States to investigate the appropriate types of boats suitable for different classes of such waterways; to investigate the subject of water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, and also railroad spurs and switches connecting with such terminals, with a view to devising the types most appropriate for different locations and for the more expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities, cities, and towns regarding the appropriate location of such terminals, and to cooperate with them in the preparation of plans for suitable terminal facilities; to investigate the existing status of water transportation upon the different inland waterways of the country, with a view to determining whether such waterways are being utilized to the extent of their capacity, and to what extent they are meeting the demands of traffic, and whether the water carriers utilizing such waterways are interchanging traffic with the railroads; and to investigate any other matter that may tend to promote and encourage inland water transportation; * * *."

Following the transfer of the property as provided by said section 201 of the Transportation Act, 1920, the Secretary of War, pursuant to the mandate of said section and subsequent enactments of Congress set forth or referred to above, carried on operations of the Inland and Coastwise Waterways Service. Receipts from such operations were placed in the general fund of the Service and disbursed as needed; funds to cover deficits were appropriated by Congress; at no time during such operations were the funds used in such operations deposited in the Treasury of the United States as general public funds; there was an annual deficit up to the time of the creation of the Inland Waterways Corporation.

The Act of June 3, 1924, 43 Stat. 360, by which this defendant was incorporated, declared the purpose of the Congress in creating this defendant corporation to be "of carrying on the operations of the Government-owned inland, canal, and coastwise waterway system to the point where the system can be transferred to private operation * * * of carrying out the mandates of Congress prescribed
130 in section 201 of the Transportation Act of 1920, as amended, and of carrying out the policy enunciated by Congress in the first paragraph of section 500 of such act * * *."

The said Act fixed the capital stock of the corporation at $5,000,000, subscribed for by the United States and to be paid to the Secretary of War, who the Act provided should be the incorporator, and who should govern and direct the corporation in the exercise of its functions; the said Act appropriated said sum for the payment of such subscription.

By section 3 of the said Act, the corporation was directed to continue the operation of the transportation and terminal facilities then being operated by the Secretary of War under section 201 of the Transportation Act, 1920, and, as soon as there was an improved channel sufficient to permit the same, initiate the water carriage theretofore authorized upon the Mississippi River above St. Louis. By section 5, it was provided that the corporation, among other things:

"(g) May exercise any of the functions vested in the Secretary of War by sections 201 and 500 of the Transportation Act, 1920, as amended.

"(i) May, in the exercise of such functions, conduct the business of a common carrier by water, and maintain, manage, and operate properties held for or used in the service of transportation, or necessary or convenient to such use; and

"(j) In addition to the powers specifically granted, shall have such powers as may be necessary or incidental to fulfill the purposes of its creation."

Section 6 (a) directed the Secretary of War to transfer to the corporation all assets acquired, constructed, or operated by or under the direction of the said Secretary, or which reverted to the United States, under section 201 of the Transportation Act, 1920. Section 6 (b) conferred upon the corporation all the rights, privileges, powers, duties, and liabilities of the said Secretary in respect to the functions exercised by him in respect of this service and section 6 (c) made available to the corporation for expenditure, or the making of loans by it, all money then available and all money repaid on loans.

The capital authorized and appropriated by the said Act proved insufficient to adequately carry out the mandates imposed upon
131 this defendant and by the Act of May 29, 1928, 45 Stat. 978 (the so-called Denison Act) Congress increased the capital stock to $15,000,000, and appropriated $10,000,000 additional for its stock subscription.

The said Denison Act authorized the extension of barge line service on the Mississippi River above St. Louis. It also set forth the policy of Congress in regard to the future operations of the Corporation, as follows:

"It is hereby declared to be the policy of Congress to continue the transportation services of the corporation until (1) there shall have been completed in the rivers where the corporation operates, navigable channels, as authorized by Congress, adequate for reasonably dependable and regular transportation service thereon; (2) terminal facilities shall have been provided on such rivers reasonably adequate for joint rail and water service; (3) there shall have been published and filed under the provisions of the Interstate Commerce Act, as amended, such joint tariffs with rail carriers as shall make generally available the privileges of joint rail and water transportation upon terms reasonably fair to both rail and water carriers: and (4) private persons, companies, or corporations engaged, or are ready and willing to engage, in common-carrier service on such rivers."

It also stated the terms upon which the facilities of the corporation may be leased or sold, which must be approved by the President. This amendment to the original Act required that the Corporation and private carriers must obtain certificates of public convenience

and necessity; continued the provision that the corporation's transportation and terminal facilities should be subject to the Interstate Commerce Act "in the same manner and to the same extent as if such facilities were privately owned," and added the provision:

"All vessels of the corporation operated and employed solely as merchant vessels shall be subject to all other laws, regulations, and liabilities governing merchant vessels."

The final section directed the Secretary of War to investigate the cost of the proposed inland water route from Boston to Beaufort, N. C., to determine the feasibility and advisability of extending the service of the Corporation to the waterways included in such a route, "and to report thereon to the Congress as soon as practicable."

132 This defendant avers that as is apparent from the legislation referred to, it was created as an instrumentality of the United States for the carrying out of the declared policy contained in section 500 of the Transportation Act, 1920, and for the purpose of constructing, enlarging and making available for water transportation purposes, internal waterways, terminals and other facilities incident to and necessary in development thereof; that as such, its power and duties and liabilities are subject to the absolute control and direction of the United States through Congress; that all its assets are assets of the United States and subject to the latter's will and disposition; that except for revenues received from operations, its only source of receipts is from the appropriations made by Congress as a stock subscription; that all moneys held by it are public moneys received either from Congress as aforesaid, or derived from the operations of the corporation, which said operations are conducted in the interest and for the benefit of the people of the United States; that any decree or judgment against this defendant as prayed in this suit would materially affect the United States in respect to its assets and resources.

Further answering, this defendant avers that if, as alleged in said paragraph numbered 10, the said Commercial National Bank had no authority to pledge or deliver the said securities to insure the deposits made by this defendant, all moneys deposited by this defendant in the said bank, as specified in said paragraph 10, the same being public moneys were received and held by the said Bank unlawfully and in violation of law; that by so receiving and holding said moneys, the said Bank held the said moneys as a trustee ex malificio for this defendant and the said plaintiff as Receiver so held them and the said moneys were held in trust by the said Bank and the said plaintiff as Receiver, for the benefit of this defendant; that full payment and satisfaction having been made by the said plaintiff, as receiver, by the cash payment in redemption of a portion of the securities and by the sale of the balance of the other securities, there can be no recovery therefor in this suit.

133 And for further answer this defendant says that if the bank was without authority to pledge the bonds, the contract was at the most only ultra vires; and having received the benefits of said contract by inducing the defendant to deposit its money with it, the plaintiff was in equity bound to perform its contract to safeguard the funds of the defendant; which contract it has fully performed; and having so performed, it cannot now disavow that contract and receive back the sum here in question.

And for further answer, this defendant says, that if the contract pledging the bonds in question was ultra vires, the equity of the defendant is prior to that of the depositors and creditors of the bank in this; that it could have demanded the return of its deposits in full at any date following the making of such deposits in the plaintiff bank; while the equity of the depositors to have the assets of the bank distributed equally among them attached only upon the failure of the said plaintiff bank, to wit, February 27, 1933; and having recognized the priority of the defendant in the funds in question, and having made restitution as equity demanded, the plaintiff is barred from recovery in this court.

134 For a further answer, this defendant avers and says, that plaintiff ought not to have and maintain this suit for the following reasons:

1. The said plaintiff is guilty of laches such as in equity should bar him from the relief sought, since the transactions complained of occurred more than two years prior to the institution of this suit.

2. The bill of complaint is multifarious, since it seeks discovery, accounting, and relief against defendants other than this defendant in respect of matters and things in which this defendant is not involved and has no interest or concern.

3. The plaintiff has a plain, adequate and complete remedy at law.

Answering paragraphs numbered 11 to 14 inclusive of the said bill of complaint, this defendant avers that it has no knowledge of, interest in, or concern with, the matters and things set forth in said paragraphs and that the allegations therein contained state no cause of action against it.

WHEREFORE, having made full answer, this defendant prays that the bill of complaint be dismissed as to it, with costs against the plaintiff.

INLAND WATERWAYS CORPORATION.
By T. Q. ASHBURN, *President.*

LESLIE C. GARNETT,
United States Attorney.
H. L. UNDERWOOD,
Assistant United States Attorney.
LOYOLA M. COYNE,
Attorney, Inland Waterways Corp.
Attorneys for defendant, Inland Waterways Corporation.

135 DISTRICT OF COLUMBIA, *ss:*

T. Q. Ashburn, being first duly sworn, deposes and says: that he is President of the Inland Waterways Corporation, one of the defendants in the above entitled cause; that he makes this affidavit and verification as such President for the said corporation; that he has read the foregoing answer by him subscribed and knows the contents thereof; and that he verily believes the facts stated therein to be true.

T. Q. ASHBURN, *President.*

Subscribed and sworn to before me this 21 day of September, 1935.

J. W. JENKINSON.
Notary Public, D. C.

136 *Stipulation as to answer of United States Shipping Board Fleet Corporation*

Filed June 15, 1936

* * * * * * *

It is stipulated that the answer of the defendant United States Shipping Board Merchant Fleet Corporation, heretofore, to wit, on September 19, 1935, filed in this cause, shall for all purposes be taken, treated, and considered as the answer of the said defendant, United States Shipping Board Merchant Fleet Corporation, to the amended bill of the plaintiff filed herein on June 4, 1936.

SHERLEY, FAUST & WILSON,
by CHARLES F. WILSON
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.
LESLIE C. GARNETT,
United States Attorney,
H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for defendant, United States Shipping Board Merchant Fleet Corporation.

F. R. CONWAY,
Of Counsel.

Stipulation as to answer of Inland Waterways Corporation

Filed July 14, 1936

* * * * * * *

It is hereby stipulated by the plaintiff and the defendant Inland Waterways Corporation, acting by their respective attorneys, that the answer to the original bill of complaint herein filed by and on behalf of the said defendant on September 21, 1935, may and shall be taken, considered, and accepted as and for the answer of said Inland Waterways Corporation to the amended bill of complaint filed herein on June 4, 1936.

SHERLEY, FAUST & WILSON,
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.
LESLIE C. GARNETT,
United States Attorney,
H. L. UNDERWOOD,
Ass't United States Attorney.
Attorneys for Defendant Inland Waterways Corporation.

137 *Suggestion of death and order of substitution*

Filed October 6, 1936

* * * * * * *

This cause having come on for further consideration, upon the suggestion made in open Court by counsel for the plaintiff and de-

fendants herein of the death of defendants George H. Dern and Arthur L. Flint, and it appearing to the satisfaction of the Court that Harry H. Woodring has succeeded the decedent George H. Dern as Secretary of War and that H. A. A. Smith has succeeded the decedent Arthur L. Flint as General Purchasing Officer and Chief of Washington Office, The Panama Canal, it is by the Court this 6th day of October, 1936

Ordered, that Harry H. Woodring be, and he hereby is, made a party defendant herein in the place and stead of George H. Dern, deceased, and it is further ordered that H. A. A. Smith be, and he hereby is, made a party defendant herein in the place and stead of Arthur L. Flint, deceased.

ALFRED A. WHEAT, *Chief Justice.*

138 *Answer of defendants Harry H. Woodring, Secretary of War, H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, Creed Fulton Cox, Chief of Bureau of Insular Affairs, War Department, and C. F. Brown, Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, to amended bill of complaint.*

Filed October 31, 1936

* * * * * * *

Come now Harry H. Woodring, Secretary of War, H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, Creed Fulton Cox, Chief of Bureau of Insular Affairs, War Department, and C. F. Brown, Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, named defendants in the above-entitled cause, and for answer to the amended bill of complaint herein filed, or to such part or parts thereof as they are advised it is material for them to answer, answer and say:

1–3. Defendants admit the allegations contained in paragraphs numbered 1 to 3, inclusive, of the amended bill of complaint, except that they are without knowledge or information as to whether the United States Shipping Board Merchant Fleet Corporation is doing business in the District of Columbia as alleged in paragraph 3.

4. Defendants admit that George H. Dern was, at the time of the filing of the amended bill of complaint, Secretary of War, but aver that he has since died and that defendant Harry H. Woodring is now Secretary of War and that as such, he has been substituted as a party defendant in the place and stead of said George H. Dern.

5. Defendants aver that Arthur L. Flint was at the time of
139 the filing of the original bill of complaint, General Purchasing Officer and Chief of the Washington Office, Panama Canal, but that he died on or about May 18, 1936, and that H. A. A. Smith has succeeded him and has been substituted in his official capacity only as a party defendant in the place and stead of said Arthur L. Flint; that his title in said office is Chief of Office and General Purchasing Officer, Panama Canal.

6–8. Defendants admit the allegations contained in paragraphs numbered 6 to 8, inclusive, of said amended bill of complaint.

8 (a). These defendants admit the allegations concerning the citizenship and temporary residence of defendant Henry Morgenthau, Jr., as alleged in paragraph numbered 8 (a).

8 (b). These defendants deny that Harry H. Woodring and H. A. A. Smith are sued as individuals in this cause; on the contrary, they aver that they are made parties in their respective official capacities only by substitution in place of their predecessors in office.

9. Defendants admit the allegations contained in paragraph numbered 9 of said amended bill of complaint.

10–11. These defendants aver that they have no knowledge of, interest in or concern with, the matters and things set forth in paragraphs 10 and 11 of the said bill of complaint and that the allegations therein contained state no cause of action against them or any of them.

12. Defendants Creed Fulton Cox, Chief of Bureau of Insular Affairs, War Department and C. F. Brown, Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, aver that they have no knowledge of, interest in or concern with, the matter and things set forth in paragraph 12 of the said bill of complaint and that the allegations therein contained state no cause of action against them or either of them.

Defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer, The Panama Canal, answering said paragraph numbered 12, admit the opening the deposit account specified in the said Commercial National Bank, pursuant to the contract entered into by the said Bank and the then
140 Secretary of War as alleged in subparagraph one of said paragraph 12; admit the depositing in said Bank of further sums of money in said account and that the balance due on said account at the time of closing of said Bank was as stated in said paragraph.

Said defendants admit the pledge of bonds of the amount and as described, and the delivery thereof to the then General Purchasing Officer and Chief of the Washington Office, The Panama Canal for the purpose and as alleged in subparagraph two of said paragraph 12 but they deny that said pledge was unlawful and illegal as alleged in said subparagraph and they further deny that there was no authority or capacity in the said Bank to pledge said bonds as security for the deposits and deny that said bonds were held in trust by the then Secretary of War or are so held by his successor in office, or by the then defendant General Purchasing Officer and Chief of the Washington Office, The Panama Canal, as alleged in subparagraph three of said paragraph 12. Further, these defendants deny that they or either of them so hold said bonds or any of them.

Said defendants admit the allegations of fact contained in subparagraph four of paragraph 12 but deny that the said bonds became or were a trust and were held as such by the then Secretary of War or the then General Purchasing Officer and Chief of the Washington Office, Panama Canal, or are so held by their successors in office for the alleged beneficiaries, and deny that plaintiff is entitled to the return of said bonds or to the proceeds thereof as alleged in said subparagraph. Further, these defendants aver that if the said plaintiff, in consenting or acceding to the taking over by the then General Purchasing Officer and Chief of the Washington Office of the bonds pledged as security for the deposit aforesaid, acted "under mistake of law" as alleged in said subparagraph, he is not entitled to a recovery as sought by this suit.

Further answering said paragraph, said defendants aver that the making of the contract for the deposit and delivery of said securities, a copy of which is made Exhibit C–1 to the bill of complaint and is

incorporated in this answer by reference, was within the authority and power of the Secretary of War conferred upon him by Acts of Congress and by regulations promulgated pursuant to statu-
141 tory authority; that the securities pledged pursuant to the terms of said contract were lawfully in the possession of the then Secretary of War; that the deposits for which said securities were pledged were at the time of the closing of said bank, almost entirely composed of moneys received by the Postal Service of the Canal Zone and consisted of deposit money order funds and money order funds, which the United States is obligated to redeem and pay.

Further, said defendants aver that by the Panama Canal Act of June 28, 1902, and the supplementary Act of April 28, 1904, the President of the United States was given complete governmental control over the Canal Zone with power to legislate either directly or through the Isthmian Canal Commission, or such other persons as he might designate; that the President authorized the Secretary of War to exercise these powers on his behalf; that the then Secretary of War in 1904 directed the Isthmian Canal Commission to establish a postal service in the Canal Zone and said service was established by Act No. 7 of September 2, 1904, of the said Commission; Section 42 of said Act provided that the Postal Service of the Canal Zone should "be conducted, regulated and controlled by such of the laws, rules and regulations of the postal service of the United States as are not inapplicable to the conditions of law and fact existing in the Canal Zone, and the laws enacted and the rules and regulations adopted by the Isthmian Canal Commission," this provision being re-enacted in the Act of February 16, 1933, 47 Stat. 812, as a part of the Canal Zone Code then in course of enactment. Further, that by section 1 of the Act of August 21, 1912, c. 387, 37 Stat. 512, U. S. Code, Title 39, section 759, it was provided, with respect to Postal Savings funds of the United States, that such funds should be deposited in solvent banks, whether organized under national or State laws, being subject to national or state supervision and examination and that "the board of trustees shall take from such banks such securities in public bonds or other securities, authorized by act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand." These defendants aver that the provision of said section insofar as it required security for postal savings funds was not inapplicable, but was appli-
142 cable, to deposit money orders issued in the Canal Zone; and that it made it incumbent upon the Secretary of War, and those under his supervision having direct control of the funds, to require security from banks before making deposits, and authorized the bank to give such security; further, that Section 2 of the Panama Canal Act of August 24, 1912, 37 Stat. 560, ratifying and confirming as valid and binding "all laws, orders, regulations, and ordinances adopted and promulgated in the Canal Zone by order of the President for the government * * * of the Canal Zone" ratified and confirmed the directions and actions of the Secretary of War in requiring the deposit of securities to safe-guard the public moneys of the Canal Zone under his supervision; further, that Section 6 of the Act of August 21, 1916, 39 Stat. 528, authorized the issue of deposit money orders in the Canal Zone, in lieu of postal savings certificates then in existence, and, by Section 7 of said Act, ratified the action

taken by the Secretary of War in depositing money order funds in banks under Canal Zone regulations, and authorized the use of interest received therefrom to pay interest on deposit money orders, and any losses chargeable to the Canal Zone Postal Service, and that this was further ratified and confirmed by Section 11 of the Act approved September 21, 1922, increasing the interest rate on deposit money orders to not to exceed 3%; that in conformity with the orders of the President of October 22, 1916, and December 6, 1933, the Governor of The Panama Canal was authorized to prescribe detailed regulations to carry out the terms of the order, and that the Governor did, by Circular No. 660–61 of April 5, 1923, provide that:

"Postal savings, money order, cashhouse, and other trust and security funds received shall be remitted to depositories in accordance with contracts entered into by the Secretary of War, and disbursed only on vouchers or warrants approved by the Auditor."

that is, the Auditor of The Panama Canal, whose position was established by Executive Order of the President, and who had supervision of the Department having charge of the "collection, custody, and disbursement of funds for the Panama Canal and Canal Zone."

Further answering said paragraph 12, said defendants aver that the said contract of May 11, 1910, copy of which is made
143 Exhibit C–1 to the bill of complaint and is incorporated into this answer by reference, was made and entered into as renewal, amendment of, or substitute for an agreement of similar character and terms between the same parties, under date of January 19, 1909; that to said contract of May 11, 1910, there was a supplemental agreement, dated April 13, 1913; that the action of the Secretary of War and his subordinates in negotiating for the giving of security to safeguard the deposits and of entering into said contracts was the subject of correspondence between both the Secretary of War and The Panama Canal, and the Treasury Department, and was approved by the Secretary of the Treasury, and the entering into of the said contract of May 11, 1910, was specifically recommended by the Comptroller of the Currency and the Secretary of the Treasury.

That said practice and custom, thus initiated, were recognized, acted upon and adopted in respect of other deposits of funds which were under the control of or administered by other departments or agencies of the United States and continued without objection or question or challenge for more than twenty years and until after the closing of the various banks in which such funds were deposited.

These defendants further aver that said practice and said custom were also known to the respective Comptrollers of the Currency during the said period of more than twenty years and up to and subsequent to the transactions complained of in subparagraph four; that no objection thereto was ever raised or made by the said Com'trollers or any of them and the said practice and custom aforesaid were recognized and received and had the approval and sanction of said officials. Further, that the taking over of the bonds by the then General Purchasing Officer and Chief of Washington Office, Panama Canal, as alleged in subparagraph four of said Paragraph 12, was likewise sanctioned and approved by the Comptroller of the Currency.

Further, that Congress was informed that security for deposits of Canal Zone funds was being exacted of, and given by, banks through annual reports of the Isthmian Canal Commission made to it for the years 1913 to 1916, inclusive, and also by reports made to it by Congressional Committees on proposed legislation for the Canal Zone.

For a further and separate defense to the alleged cause of
144 action set forth in said paragraph 12, these defendants say that the plaintiff ought not to have and maintain this suit, for the following reasons:

1. The said deposit made in the Commercial National Bank was of monies of the United States so deposited by agents of the United States; that the said securities were pledged to insure said deposit and were given and received for the United States; the taking over thereof was for and on behalf of the United States; that any decree or judgment against these defendants would affect materially the United States in respect of its resources and assets; that the United States is, therefore, the real party interest as a defendant and an indispensable party to this suit in whose absence the Court ought not to proceed.

2. The plaintiff has a plain and adequate remedy at law against the United States in the United States Court of Claims for the amount claimed.

3. The bill of complaint is multifarious since it seeks discovery and relief against defendants other than these defendants in respect to matters and things in which these defendants are not involved or concerned or have any interest.

4. That plaintiff is not entitled to any recovery against these defendants or either of them, since he consented to and acquiesced in the taking over of the securities by the then General Purchasing Officer and Chief of Washington Office, Panama Canal; by reason whereof, plaintiff is estopped from suing or recovering.

5. The plaintiff is not entitled to any recovery or relief against defendants because of the doctrine in pari delicto, potior est conditio, defendentis.

13. These defendants aver that they have no knowledge of, interest in, or concern with, the matters and things set forth in paragraph numbered 13 of the said bill of complaint and that the allegations therein contained state no cause of action against them or any of them.

14. Defendant H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, avers that he has no knowledge
145 of, interest in, or concern with, the matters and things set forth in paragraph numbered 14 of said bill of complaint and that the allegations therein contained state no cause of action against him.

Defendants Harry H. Woodring, Secretary of War, Creed Fulton Cox, Chief of Bureau of Insular Affairs, War Department, and C. F. Brown, Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, answering said paragraph admit the allegations of fact therein contained except the allegation in subparagraph two that the pledge of the assets of the bank was to the then Secretary of War, which allegation they deny and on the contrary aver that said pledge was to the Government of the Philippine Islands; concerning the conclusions of law therein contained, defendants submit that they are not required to make answer thereto; nevertheless, they specifically deny that the pledging of the securities by the Commercial National Bank was unlawful or illegal on its part, as alleged in

subparagraph two; deny that there was no authority or capacity in the said bank for the pledging of said securities as alleged in subparagraph three and deny that said securities or the proceeds thereof were or are held in trust by these defendants or either of them or were so held by their predecessors in office, for the benefit of said bank, its stockholders, depositors or creditors as alleged in subparagraph three and four of said paragraph 14; deny that the sale of said securities was illegal or without authority of law as alleged in subparagraph four; deny that the payment made by plaintiff to defendant Creed F. Cox set forth in said subparagraph was illegal or made under mistake of law and as to such payment, these defendants say that if, as alleged, the said payment was made by plaintiff "acting under mistake of law," there can be no recovery thereof.

Answering subparagraph 5 of said paragraph 14, defendants admit allegations as to the official status of defendant C. F. Brown; as to the power of the Court asserted in said subparagraph, these defendants submit that no answer is required of them.

15. These defendants admit that the proceeds of the sale of the bonds, described in paragraph 14 (not paragraph 8 as alleged)
146 and the amount paid to the defendant Chief of the Bureau of Insular Affairs, alleged in subparagraph 4 of said paragraph 14, were transmitted to and placed with the Chase National Bank of the City of New York as alleged in paragraph 15 of the amended bill of complaint. Defendants are without knowledge or information sufficient to form a belief as to whether, as alleged in said paragraph numbered 15, said proceeds and the amount of the said payment made to the defendant Chief of the Bureau of Insular Affairs or any part thereof were transmitted to defendant Henry Morgenthau, Jr., and therefore deny the allegation to that effect and demand strict proof thereof, if the same be material. Defendants further deny that the monies deposited with defendant Morgenthau, Jr., were or are funds of the plaintiff herein and deny that said Morgenthau, Jr., received and holds the same in trust for plaintiff; on the contrary, these defendants aver that said proceeds and the amount of said payment were and are monies of the government of the Philippine Islands and were deposited with the said Chase National Bank to the credit of the Treasurer of the Philippine Islands; that said bank had been designated as a branch of the Philippine Insular Treasury and as a depositary of the government of the Philippine Islands.

Further defendants aver that the monies alleged to have been transmitted by the said Chase National Bank and held by and in the custody of defendant Henry Morgenthau, Jr., are monies of the Government of the Philippine Islands and are held by him as Secretary of the Treasury under the authority of the Act of June 11, 1934, 48 Stat. 929.

Further answering said amended bill of complaint, defendants aver that section 625 of the Revised Administrative Code of 1917 of the Philippine Islands was and is authority for the requirement
147 of security to insure deposits of funds of the Philippine Government and constituted ample authority for the giving of the security herein involved by the Commercial National Bank and the receipt of it by the then Secretary of War. That said section 625 is as follows:

"The Governor-General may appoint any bank or banking institution in the Philippine Islands, and the Secretary of War any similar institution in the United States, as a depositary of the Government of the Philippine Islands, after such institution has filed sufficient evidence of its sound financial condition and has deposited, as security, either in the Insular Treasury or in the Bureau of Insular Affairs, at Washington, bonds of the United States or of the Government of the Philippine Islands or other bonds or securities satisfactory to and approved by the officer making the appointment and in such amount as shall be required by him."

That the enactment of said section was reported to the Congress of the United States, pursuant to the requirement of section 19 of the Act of Congress of August 29, 1916, Ch. 416, 39 Stat. 551, which provides that:

"All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which reserves the power and authority to annul the same."

That Congress did not annul said enactment and thus tacitly approved the same.

That substantially similar provisions to those contained in said section 625 were contained in an enactment of the Philippine Commission of October 12, 1907, (Section 596, Compilation of Acts of the Philippine Commission). These two provisions were expressly recognized and continued in force and effect by section 6 of the said Act of August 29, 1916, 48 U. S. Code, 1004.

Further answering said amended bill of complaint, said defendants aver that the giving of the said bond by the Commercial National Bank a copy of which is made Exhibit "E-1" to the bill of
148 complaint herein and made a part of this answer by reference, and the deposit of the securities was in accordance with a practice and custom in respect of funds of the Philippine government which has existed and continued since the year 1908; that during said period, the various Secretaries of War, acting under the provisions of said section 596 enacted October 12, 1907, and said section 625, of the Revised Administrative Code, have from time to time designated certain state and national banks within the continental limits of the United States as depositaries for funds of the Philippine Government and people, the several Governors-General of the Philippine Islands have designated the same banks as branches of the Insular Treasury, and the Treasurers of the Philippine Islands have placed and kept on deposit therein large amounts of the public funds of the People of the Philippine Islands, for the purpose of maintaining the parity of Philippine bonds, notes, coinage and currency; that the total amount of such deposits in the United States formerly approximated $63,000,000, and these deposits were formerly distributed among 39 national banks and 18 state banks.

That each depositary bank was required to deposit, and deposited with or to the order of the Chief of the Bureau of Insular Affairs, War Department, collateral security of a value equivalent to the amount of the deposit, in each instance under a formal pledge agreement in writing authorizing recourse by the pledgee to the pledged collateral in the event of a failure to repay the amount of the deposit; that such custom and practice were recognized, well-known, acted upon and continued without objection, question or challenge for about twenty-five years and until after the closing of the Commercial

National Bank; that such custom and practice were also known to the respective Comptrollers of the Currency during the said period since its adoption and up to and subsequent to the sale of the said securities; that no objection thereto was ever raised or made by any of the said Comptrollers and said practice and custom aforesaid were recognized and received and had the approval and sanction of said officials;

Further, that the Comptroller of the Currency was also aware of and was consulted with, concerning the proposed sale of the said securities here involved and took no action to prevent it but
149 sanctioned and approved the said sale; that the plaintiff, as receiver of the said Commercial National Bank, interposed no objection to said sale and acquiesced therein.

Said defendants further aver that said practice and custom of requiring and receiving security has obtained for many years in respect of deposits of other funds which were under the control of or administered by other departments or agencies, or officers of the United States, or with respect to which such departments, agencies or officers had or performed any duties or functions and such practice and custom continued without objection or question until after the closing of the various banks in which such funds were deposited.

Further answering said amended bill of complaint, these defendants aver that defendants Woodring and Brown had no part or participation, either officially or personally in the transactions complained of in said bill and that defendant Cox likewise had no part or participation therein, except the receipt by him, as Chief of the Bureau of Insular Affairs, of the payment of $6,154.41 made by the plaintiff herein, as alleged in subparagraph 4 of paragraph 14 of the amended bill; that defendants Woodring and Brown had at no time and do not now have any authority, control or supervision over, or functions in respect of, the said funds deposited in the said Chase National Bank and which it is alleged were in whole or in part, transferred and placed in the custody of defendant Henry Morgenthau, Jr.; that defendant Cox, as Chief of the Bureau of Insular Affairs of the War Department, in respect of moneys in the Chase National Bank to the credit of the Treasurer of the Philippine Islands has authority to order the transfer thereof to the United States Treasury or to the Philippine National Bank of New York City; in respect of deposits of moneys made under the said Act of June 11, 1934 (48 Stat. 929), in the United States Treasury and which are deposited to the credit of the Treasurer of the Philippine Islands, said defendant has authority to order the transfer thereof to the said Chase National Bank; except as herein specified, said defendant Cox has no authority, control or supervision over such monies, funds or deposits.

For a further and separate defense, the said defendants say that the plaintiff ought not to have and maintain his suit for the following reasons:

1. The funds sought to be recovered are funds of the Gov-
150 ernment of the Philippine Islands, and the bond given and the pledge of securities made to insure the deposits made in the Commercial National Bank were given and made to the Government of the Philippine Islands, which is the real party in interest herein.

1. Error in declining to hold that the securities of the bank were lawfully and in substantial conformity to section 5153 of the Revised Statutes (U. S. C., title 12, sec. 90), pledged as security for the safekeeping and prompt payment of the money deposited by this defendant with the Commercial National Bank of Washington, D. C.

2. Error in declining to hold that all deposits by this defendant with said bank were public money of the United States.

3. Error in declining to hold that, if the pledging by said bank of its securities as security for the safekeeping and prompt payment of the money deposited by this defendant with said bank was ultra vires and void, each such deposit was received by said bank without its having given security in respect thereof and in violation of the penal provisions of U. S. C., title 18, section 182, from which
174 it resulted that at the instant of each such deposit said bank became trustee ex maleficio with respect thereto, and the commingling of each such deposit with money of said bank was a conversion thereof, and the trust was transferred to and imposed upon the pledged securities, because that was the intent of the parties, the evidence of that intent being the pledge agreement.

4. Error in declining to hold that the plaintiff cannot recover of this defendant, because, on July 1, 1933, without prior notice to this defendant of any adverse claim with respect to the pledged securities or the proceeds thereof, the pledged securities had been converted into money by the Treasury Department of the United States, this defendant's principal, and the proceeds of said securities commingled in the United States Treasury with other public money, and the only appropriation act by authority of which disbursement thereof could be made had expired June 30, 1933.

5. Error in declining to hold that no trust can be impressed upon the pledged securities, because they have passed out of this defendant's control, and have been sold; or upon the proceeds, because, having been commingled in the United States Treasury with other public money, they cannot be identified.

6. Error in declining to hold that, because this defendant has been dissolved by the Merchant Marine Act, 1936 (49 Stat. 1985), it cannot possess or control anything—there is nothing on which a trust can be impressed.

7. Error in declining to hold that this suit cannot be maintained because in substance it is a suit against the United States, and not within the jurisdiction of this court.

8. Error in sustaining the motion of the plaintiff for an order striking out portions of the answer of this defendant.

175 9. Error in sustaining the motion of the plaintiff for decree pro confesso against this defendant.

10. Error in rendering final decree against this defendant.

LESLIE C. GARNETT,
United States Attorney,
H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for Defendant,
United States Shipping Board, Merchant Fleet Corporation.

Service of copy of the within and foregoing assignment of errors hereby is acknowledged this 27th day of September 1937.

GEORGE B. SPRINGSTON,
Attorney for Plaintiff.

176 *Assignment of errors on behalf of Harry H. Woodring, Secretary of War and H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal*

Filed September 27, 1937

* * * * * * * * *

(1) The Court erred in holding and determining that there was no authority for the pledging by the Commercial National Bank of the securities involved to safeguard the deposits of the funds of the Panama Canal and in not holding and determining that such authority existed.

(2) The Court erred in not holding and determining that the giving of the securities by the Commercial National Bank was warranted by custom and usage long established, well recognized and unquestioned for many years, and also sanctioned by the Secretary of the Treasury and the Comptroller of the Currency.

(3) The Court erred in not holding and determining that the plaintiff was estopped from bringing and maintaining this suit by the action of his predecessor, the Receiver of the said bank, approved by the Comptroller of the Currency, in agreeing to the taking over of the securities by these defendants.

(4) The Court erred in not holding and determining that even if the pledge of the securities was illegal, nevertheless the plaintiff was not entitled to recover since the parties stand in pari delicto.

(5) The Court erred in not holding and determining that the United States is an indispensable party to this suit insofar as the funds of the Panama Canal are concerned.

(6) The Court erred in not holding and determining that the answer of these defendants constituted a complete defense to
177 the suit against them; and in not overruling plaintiff's motion to strike and for a decree pro confesso.

(7) The Court erred in sustaining the plaintiff's motion to strike and for a decree pro confesso.

(8) The Court erred in entering a decree against these defendants.

LESLIE C. GARNETT,
United States Attorney,
H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for said defendant.

Service of a copy of the foregoing assignment of errors is hereby acknowledged this 27th day of September 1937.

GEORGE B. SPRINGSTON,
Attorney for Plaintiff.

The suit in respect of the asserted cause of action affecting these defendants is, in essence, one against the Government of the Philippine Islands, which has not consented to be sued herein.

3. The Government of the Philippine Islands is an indispensable party to this suit, one whose interests are involved and vitally affected by this suit, and in whose absence the Court ought not to proceed.

4. The amended bill of complaint states no cause of action against these defendants or any of them cognizable in equity and sets forth no facts warranting the relief sought against them or any of them.

5. The plaintiff is not entitled to any recovery or relief against these defendants or any of them, since he consented to and acquiesced in the sale of the securities and voluntarily made the payment set forth in subparagraph 4 of paragraph 14 of the amended bill of complaint; by reason of which plaintiff is estopped from suing or recovering.

6. The plaintiff is not entitled to any recovery or relief against the defendants, because of the doctrine in pari delicto, potior est conditio defendentis.

7. The plaintiff is not entitled to any relief or recovery against defendant Harry H. Woodring because he is not properly a party hereto, there being no authority for his substitution as a party defendant in place of George H. Dern, deceased, since the statute under which substitution was granted does not apply to or cover a case such as that presented by the amended bill of complaint.

16. Answering paragraph numbered 16, defendants Harry H. Woodring and H. A. A. Smith admit that the funds and money referred to in paragraph numbered 12, to wit, the so-called Panama Canal funds, are not public funds and are not part of the revenue of the United States; that they are not subject to the control of the Secretary of the Treasury in his official capacity as such Secre-
151 tary in respect of public moneys of the United States; but in this connection they aver that the interest accruing on said moneys is part of the revenues of the United States; and further that in respect of such of said moneys as were derived from the issuance of Postal Money Orders, they are funds for the payment of which the United States is responsible and obligated.

Said defendants deny that said moneys are not moneys of the Panama Canal, as alleged in said paragraph, and on the contrary aver that they are moneys of the said Panama Canal. These defendants admit that the Commercial National Bank was never designated by the Secretary of the Treasury as depository of the Government of the Canal Zone, but say that the Secretary of the Treasury did approve of the depositing in the said Commercial National Bank of moneys of the Panama Canal. Said defendants admit that the Secretary of the Treasury did not exact of the said Bank, the pledge of the securities given to insure the deposits of the Panama Canal funds but they aver that the Secretary of the Treasury was consulted by the Secretary of War in respect of the latter's proposal to require securities for said deposits and approved the same.

Defendant H. A. A. Smith is without knowledge or information concerning the other allegations of fact contained in said paragraph 16 and therefore denies them.

Defendants Harry H. Woodring, Creed Fulton Cox, and C. F. Brown, answering in respect of the moneys specified in paragraphs 14 and 15, to wit, the moneys involved in the transactions of the Government of the Philippine Islands, admit that said moneys are not moneys of the United States and are not subject to the control of the Secretary of the Treasury in his official capacity in respect of moneys of the United States; they aver, however, that said moneys are moneys of the Government of the Philippine Islands and that said moneys are deposited with the Secretary of the Treasury as moneys of the Government of the Philippine Islands pursuant to the Act of June 11, 1934, and are held in the Treasury of the United States to the credit and for the account of the Treasurer of the Philippine Islands and are claimed by said government as a part of its public moneys.

Said defendants admit that the said Commercial National
152 Bank was never designated by the Secretary of the Treasury to receive deposits of the Government of the Philippine Islands and that the Secretary of the Treasury never exacted from said bank the pledge of the securities to secure deposits of the Government of the Philippine Islands; but these defendants aver that the Comptroller of the Currency, a subordinate of the Secretary of the Treasury knew of said deposits made in said Bank by and on behalf of the Government of the Philippine Islands and that securities to insure the same had been exacted from said Bank and acquiesced in said transactions.

As to the other allegations of fact contained in said paragraph, defendant Harry H. Woodring, except as to the allegations respecting the Panama Canal funds, already answered, and defendants Creed Fulton Cox and C. F. Brown are without knowledge or information and, therefore, deny the same.

Wherefore, having made full answer, all these defendants pray that the said amended bill of complaint be dismissed as to them with costs against the plaintiff.

HARRY H. WOODRING,
Secretary of War.
By MALIN CRAIG,
Acting Secretary of War.
CREED FULTON COX,
Chief of Bureau of Insular Affairs,
War Department.
C. F. BROWN,
Disbursing Agent,
Philippine Revenue, Bureau of Insular Affairs,
War Department.
H. A. A. SMITH,
Chief of Office and General Purchasing Officer,
Panama Canal.
LESLIE C. GARNETT,
United States Attorney,
H. L. UNDERWOOD,
Assistant United States Attorney,
E. M. CAFFEY,
Captain, Judge Advocate General's
Office, War Department,
Attorneys for Defendants.

DISTRICT OF COLUMBIA, *ss:*

Malin Craig, being first duly sworn, deposes and says that he is Acting Secretary of War of the United States, and as such has subscribed to the foregoing answer made on behalf of Harry H. Woodring, Secretary of War, one of the defendants in the above-entitled cause; that he has subscribed to said answer and makes this affidavit and verification on behalf of said defendant, because of the absence of the latter from the District of Columbia; that he has read the foregoing answer by him so subscribed and knows the contents thereof, and that the facts therein stated he verily believes to be true.

MALIN CRAIG.

Subscribed and sworn to before me this 30th day of October 1936.

[SEAL] HERBERT F. STATESIR,
Notary Public, D. C.

My commission expires Feb. 1, 1941.

153 DISTRICT OF COLUMBIA, *ss:*

Creed Fulton Cox, being first duly sworn, deposes and says that he is Chief of Bureau of Insular Affairs, War Department, and as such, named one of the defendants in the above-entitled cause; that he has read the foregoing answer by him subscribed and verily believes the facts stated therein to be true.

CREED FULTON COX.

Subscribed and sworn to before me this 29th day of October 1936.

[SEAL] ALFRED H. MORI,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *ss:*

C. F. Brown, being first duly sworn, deposes and says that he is Disbursing Agent, Philippine Revenue, Bureau of Insular Affairs, War Department, and as such, named one of the defendants in the above-entitled cause; that he has read the foregoing answer by him subscribed and verily believes the facts stated therein to be true.

C. F. BROWN.

Subscribed and sworn to before me this 29th day of October 1936.

[SEAL] ALFRED H. MORI,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *ss:*

H. A. A. Smith, being first duly sworn, deposes and says that he is Chief of Office and General Purchasing Officer, Panama Canal, and as such, named one of the defendants in the above-entitled cause; that he has read the foregoing answer by him subscribed and verily believes the facts stated therein to be true.

H. A. A. SMITH.

Subscribed and sworn to before me this 29th day of October 1936.

[SEAL] FLOYD B. HEIMER,
Notary Public, D. C.

154 *Motion to strike paragraphs numbered 11 to 37 inclusive, and A to G inclusive, of the separate answers of the United States Shipping Board Merchant Fleet Corporation and for the entry of a decree pro confesso for plaintiff against said defendant, United States Shipping Board Merchant Fleet Corporation*

Filed December 28, 1936

* * * * * * *

Comes now Robert C. Baldwin, Receiver of the Commercial National Bank of Washington, plaintiff herein, by his attorneys, and moves the court to strike paragraphs 11 to 37, inclusive, and A. to G., inclusive of the separate answer of the United States Shipping Board Merchant Fleet Corporation and for the entry of a decree pro confesso for plaintiff against said defendant, United States Shipping Board Merchant Fleet Corporation, and for grounds therefor states:

1. The answer of the defendant, United States Shipping Board Merchant Fleet Corporation, does not set up any defense to the cause of action alleged in plaintiff's bill and plaintiff is entitled to have the paragraphs of said answer heretofore described stricken and is entitled to a decree pro confesso against defendant upon the allegations of plaintiff's bill.

155 2. The Pledge of the Commercial National Bank assets to secure deposits of the United States Shipping Board Merchant Fleet Corporation, or its predecessors in title, was unauthorized in law, ultra vires the bank, and void; such pledge constituted an illegal and preferential disposition of the bank's assets and the receiver may recover either the pledged securities or their proceeds.

3. And for the additional reasons and principles of law set forth in the attached memorandum of points and authorities in support of this motion.

To:

LESLIE C. GARNETT,
H. L. UNDERWOOD,
O. P. M. BROWN,
F. R. CONWAY,
Attorneys for United States Shipping Board Merchant Fleet Corporation.

Please take notice that the authorities intended to be used in support of the attached motion are appended hereto and the rules of this court require that if you oppose the granting of the above motion, you shall, within five (5) days from the time of the service of a copy of this motion upon you, file in reply with the Clerk of this court a

statement of the points and authorities upon which you rely and serve a copy upon counsel for the plaintiff.

SHERLEY, FAUST & WILSON,
H. B. WEAVER, JR.,
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.
ROBERT C. BALDWIN,
Receiver.

Service of the above motion and points and authorities in support thereof acknowledged this 28th day of December, 1936.

156 LESLIE C. GARNETT,
U. S. Atty.
F. R. CONWAY,
Attorneys, United States Shipping Board Merchant Fleet Corporation.

157 *Motion to strike paragraph 10 and defenses numbered 1, 2, and 3 alleged in the separate answer of defendant, Inland Waterways Corporation, a corporation, and for the entry of a decree pro confesso for plaintiff against said defendant.*

Filed February 11 1937

* * * * * * *

Comes now Robert C. Baldwin, Receiver of the Commercial National Bank of Washington, plaintiff herein, by his attorneys, and moves the court to strike paragraph 10 and defenses numbered 1, 2, and 3 alleged in the separate answer of defendant, Inland Waterways Corporation, a corporation, and for the entry of a decree pro confesso for plaintiff against said defendant, Inland Waterways Corporation, and for grounds therefor states:

1. The answer of the defendant, Inland Waterways Corporation, does not set up any defense to the cause of action alleged in plaintiff's bill, and plaintiff is entitled to have the paragraph and defenses heretofore described stricken and is entitled to a decree pro confesso against said defendant upon the allegations of plaintiff's bill.

2. The pledge of the Commercial National Bank assets to secure deposits of the Inland Waterways Corporation, or its predecessors in title, was unauthorized in law, ultra vires the bank, and void; such pledge constituted an illegal and preferential disposition of the bank's assets and the receiver may recover either the pledged securities or their proceeds.

3. And for the additional reasons and principles of law set forth in the attached memorandum of points and authorities in support of this motion.

SHERLEY, FAUST AND WILSON,
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.

158 To:
LESLIE C. GARNETT,
H. L. UNDERWOOD,
LOYOLA M. COYNE,
Attorneys for Inland Waterways Corporation, a corporation.

Please take notice that the authorities intended to be used in support of the attached motion are appended hereto and the rules of this court require that if you oppose the granting of the above motion, you shall, within five (5) days from the time of the service of a copy of this motion upon you, file in reply with the Clerk of this court a statement of the points and authorities upon which you rely and serve a copy upon counsel for the plaintiff.

SHERLEY, FAUST & WILSON,
By CHARLES F. WILSON
GEORGE B. SPRINGSTON
Attorneys for Plaintiff.
ROBERT C. BALDWIN, *Receiver.*

159 *Motion to strike paragraph 12 and defenses numbered 2 and 3 alleged in the separate answer of defendants, George H. Dern, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal, and for the entry of a decree pro confesso for plaintiff against said defendants*

Filed February 11, 1937

* * * * * * *

Comes now Robert C. Baldwin, Receiver of the Commercial National Bank of Washington, plaintiff herein, by his attorneys, and moves the court to strike paragraph 12 and defenses numbered 2 and 3 alleged in the separate answer of defendants, George H. Dern, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal, and for the entry of a decree pro confesso for plaintiff against said defendants, and for grounds therefor states:

1. Said answer does not set up any defense to the cause of action alleged in plaintiff's bill, and plaintiff is entitled to have the paragraph and defenses heretofore described stricken and is entitled to a decree pro confesso against said defendants upon the allegations of plaintiff's bill.

2. The pledge of the Commercial National Bank's assets to secure deposits of the Government of the Canal Zone was unauthorized in law, ultra vires the bank and void; such pledge constituted an illegal and preferential disposition of the bank's assets and the receiver may recover either the pledged securities or their proceeds without restitution by payment in full of the credit balance on deposit in the bank at suspension.

3. And for the additional reasons and principles of law set forth in the attached memorandum of points and authorities in support of this motion.

SHERLEY, FAUST & WILSON,
By CHARLES F. WILSON
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.
ROBERT C. BALDWIN, *Receiver.*

160 To:
LESLIE C. GARNETT,
H. L. UNDERWOOD,
H. A. A. SMITH,
Attorneys for George H. Dern, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal.

Please take notice that the authorities intended to be used in support of the attached motion are appended hereto and the rules of this court require that if you oppose the granting of the above motion, you shall, within five (5) days from the time of the service of a copy of this motion upon you, file in reply with the Clerk of this court a statement of the points and authorities upon which you rely and serve a copy upon counsel for the plaintiff.

SHERLEY, FAUST & WILSON,
By CHARLES F. WILSON.
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.
ROBERT C. BALDWIN, *Receiver.*

161 *Suggestion of appointment of Cary A. Hardee as receiver*

Filed March 18 1937

* * * * * * * *

Comes now Cary A. Hardee, by his attorneys, and suggesting his appointment by the Comptroller of the Currency of the United States, pursuant to law, on March 1, 1937, as Receiver of Commercial National Bank of Washington, D. C., in the place and stead of Robert C. Baldwin, resigned, requests that he be substituted as plaintiff in the above entitled cause in the place and stead of said Robert C. Baldwin.

Sherley, Faust & Wilson,
By SHERLEY, FAUST & WILSON,
GEORGE B. SPRINGSTON,
Attorneys for plaintiff.

We consent:
LESLIE C. GARNETT,
DAVID A. PINE,
Attorneys for defendants.
Let this be granted:
F. DICKINSON LETTS, *Justice.*

Memorandum of court

Filed July 14 1937

* * * * * * * *

Motion to strike pars. 11 to 37 incl and A. to G incl of answer U. S. Shipping Board and for decree pro. con—sustained.

Motion to strike Par. 10 and defenses numbered 1, 2 and 3 of answer of Inland Water Ways and for entry of decree pro. con, sustained.

Motion to strike par. 12 and defenses 2 & 3 in answer of defts. Dern, Secy of War & H. A A Smith, Genl Pur. Officer & Chief of Washington Office Panama Canal, & for entry decree pro. con, sustained.

Clerk will please notify Counsel.

LUHRING, *J.*

162 *Order sustaining motion to strike paragraph 10 and defenses numbered 1, 2 and 3 alleged in the separate answer of defendant Inland Waterways Corporation, and for the entry of a decree pro confesso for plaintiff against said defendant, and granting a decree pro confesso and entering judgment for the plaintiff against the defendant Inland Waterways Corporation*

Filed August 23 1937

* * * * * * * *

This cause having come on for hearing at this term of Court upon the plaintiff's motion to strike paragraph 10 and defenses numbered 1, 2 and 3 alleged in the separate answer of defendant, Inland Waterways Corporation, a corporation, and for the entry of a decree pro confesso for plaintiff against said defendant, and it appearing to the satisfaction of the Court that said motion should be granted, it is

The Court this 18th day of August, A. D. 1937,

Adjudged, ordered and decreed, that the motion of plaintiff to strike paragraph 10 and defenses 1, 2 and 3 alleged in the separate answer of defendant, Inland Waterways Corporation, and for the entry of a decree pro confesso against said defendant be and the said motion is hereby granted; and, the said defendant, Inland Waterways Corporation, having elected to stand on its answer as filed and having stipulated that a final decree be entered at this time, it is further

Adjudged, ordered and decreed, that judgment be entered for the plaintiff against the defendant Inland Waterways Corporation for the sum of $506,215.63, with interest at the legal rate from

163 April 20, 1933, to April 25, 1933, as of which date a credit and offset in the sum of $21,804.16 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $484,411.47 will be subject to and will carry interest at the legal rate from April 25, 1933 to September 26, 1933, as of which date a credit and offset of 20% dividend on defendant's provable general claim in the sum of $482,656.57 amounting to $96,531.31 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $387,880.07 will be subject to and will carry interest at the legal rate from September 26, 1933 to November 13, 1933, on which date a credit and offset of 30% dividend on defendant's provable general claim in the sum of $482,656.57 amounting to $144,796.97 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $243,083.10 will be subject to and will carry interest at the legal rate from November 13, 1933 to February 24, 1936, on which date a credit and offset of 10% dividend on defendant's provable general claim in the sum of $482,656.57 amounting to $48,265.66 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $194,817.44 will be subject to and will carry interest at the legal rate from February 24, 1936 until paid; and it is further

Adjudged, ordered and decreed, that the defendant Inland Waterways Corporation is entitled to file a claim against the Receiver of the Commercial National Bank of Washington, D. C., and to receive such further dividends thereon as are paid to unsecured depositors and other general creditors of said bank, and it is further

Adjudged, ordered and decreed, that execution may issue against the defendant upon the judgment herein awarded.

O. R. LUHRING, *Justice.*

164 The defendant, by its attorneys, objects and excepts to the entry of the above order and decree of the Court, which objection and exception is hereby allowed by the Court, and an appeal is noted in open court to the United States Court of Appeals for the District of Columbia, which appeal is hereby allowed by the Court.

O. R. LUHRING, *Justice.*

No objection to the form. The defendant consents to the entry of a final decree herein in place of a decree pro confesso.

H. L. UNDERWOOD,
Assistant United States Attorney.

165 *Assignment of errors on behalf of Inland Waterways Corporation*

Filed September 1, 1937

(1) The Court erred in holding and determining that there was no authority for the pledging by the Commercial National Bank to this defendant of the securities involved to secure the deposits of the Inland Waterways Corporation in said bank and in not holding and determining that authority existed therefor.

(2) The Court erred in not holding and determining that the pledging of the securities was lawful and warranted by reason of custom and usage long established, well recognized and unchallenged for many years and sanctioned and approved by the Comptroller of the Currency and the Secretary of the Treasury.

(3) The Court erred in not holding and determining that the plaintiff is estopped to maintain this suit as against this defendant by the action of his predecessor Receiver in acquiescing in and agreeing to the sale by this defendant of a portion of the pledged securities and in purchasing from this defendant the other pledged securities; all with the consent and approval of the Comptroller of the Currency.

(4) The Court erred in not holding and determining that even if the pledge of the securities was illegal, nevertheless the plaintiff was not entitled to recover since the parties stand in pari delicto.

(5) The Court erred in not holding and determining that, assuming lack of authority for the giving of security, the deposits
166 of this defendant in the Commercial National Bank were held by the bank as a trustee ex malificio and that there could be no recovery; full satisfaction to defendant having heretofore been made by the Receiver.

(6) The Court erred in not holding and determining that plaintiff could not have relief from "a mistake of law."

(7) The Court erred in not holding that the plaintiff's claim against it is barred by laches.

(8) The Court erred in not holding and determining that the plaintiff has a full, complete and adequate remedy at law.

(9) The Court erred in not holding and determining that defendant's answer constitutes a good defense to the bill of complaint.

(10) The Court erred in granting the motion to strike and for a decree pro confesso against this defendant and in not denying said motion.

(11) The Court erred in entering a decree against this defendant.

LESLIE C. GARNETT,
United States Attorney.
H. L. UNDERWOOD,
Assistant United States Attorney.
Attorneys for defendant, Inland Waterways Corporation.

Service of a copy of the foregoing assignment of errors is hereby acknowledged this 1st day of September, 1937.

SHERLEY, FAUST & WILSON,
By CHARLES F. WILSON,
Attorney for Plaintiff.

167 *Order sustaining motion to strike paragraphs 11 to 37 inclusive, and A to G inclusive, of the separate answer of the United States Shipping Board Merchant Fleet Corporation and for the entry of a decree pro confesso for plaintiff against said defendant, and granting a decree pro confesso and entering judgment for the plaintiff against the defendant United States Shipping Board Merchant Fleet Corporation*

Filed September 24 1937.

* * * * * * *

This cause having come on for hearing at this term of Court upon the plaintiff's motion to strike paragraphs 11 to 37 inclusive, and A to G inclusive, of the separate answer of the United States Shipping Board Merchant Fleet Corporation, and for the entry of a decree pro confesso for plaintiff against said defendant, and it appearing to the satisfaction of the Court that said motion should be granted, it is by the Court this 24th day of September, A. D. 1937,

Adjudged, ordered and decreed, that the motion of plaintiff to strike paragraphs 11 to 37 inclusive, and A to G inclusive, of the separate answer of defendant, United States Shipping Board Merchant Fleet Corporation, and for the entry of a decree pro confesso against said defendant be and said motion is hereby granted; and, the said defendant, United States Shipping Board Merchant Fleet Corporation, having elected to stand on its answer as filed and having stipulated that a final decree be entered at this time, it is further

168 Adjudged, ordered and decreed, that judgment be entered for the plaintiff against the defendant United States Shipping Board Merchant Fleet Corporation, for the sum of $413,140.49, with interest at the legal rate from April 18, 1933 to April 27, 1933, as of which date a credit and offset in the sum of $4,270.17 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $408,870.32 will be subject to and will carry interest at the legal rate from April 27, 1933 to September 26, 1933, as of which date a credit and offset of 20% dividend on defendant's provable general claim in the sum of $409,297.28 amounting to $81,859.46 is hereby awarded and credited, and thereafter the balance of said judg-

ment amounting to $327,010.86 will be subject to and will carry interest at the legal rate from September 26, 1933 to November 13, 1933, on which date a credit and offset of 30% dividend on defendant's provable general claim in the sum of $409,297.28 amounting to $122,789.18 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $204,221.68 will be subject to and will carry interest at the legal rate from November 13, 1933 to February 24, 1936, on which date a credit and offset of 10% dividend on defendant's provable general claim in the sum of $409,297.28 amounting to $40,929.73 is hereby awarded and credited, and thereafter the balance of said judgment amounting to $163,291.95 will be subject to and will carry interest at the legal rate from February 24, 1936 until paid; and it is further

Adjudged, ordered and decreed, that the defendant United States Shipping Board Merchant Fleet Corporation, is entitled to file a claim against the Receiver of the Commercial National Bank of Washington, D. C., and to receive such further dividends thereon as are paid to unsecured depositors and other general creditors of said bank; and it is further

Adjudged, ordered and decreed, that execution may issue against the defendant upon the judgment herein awarded.

O. R. LUHRING, *Justice.*

169 The defendant, United States Shipping Board Merchant Fleet Corporation, by its attorneys, objects and excepts to the entry of the above order and decree of the Court, which objection and exception is hereby allowed by the Court, and an appeal is noted in open court to the United States Court of Appeals for the District of Columbia, which appeal is hereby allowed by the Court.

O. R. LUHRING, *Justice.*

No objection to the form. The defendant consents to the entry of a final decree herein in place of a decree pro confesso.

H. L. UNDERWOOD,
Assistant United States Attorney.

F. R. Conway.
M. O. T.

170 *Order sustaining motion to strike paragraph 12 and defenses numbered 2 and 3 of the separate answer of defendants, Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal, and for the entry of a decree pro confesso for plaintiff against said defendants, and granting a decree pro confesso and entering judgment for the plaintiff against the defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal*

Filed September 24, 1937

* * * * * * * *

This cause having come on for hearing at this term of Court upon the plaintiff's motion to strike paragraph 12 and defenses numbered 2 and 3 of the separate answer of defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer

and Chief of Washington Office of Panama Canal, and for the entry of a decree pro confesso for plaintiff against said defendants, and it appearing to the satisfaction of the Court that said motion should be granted, it is by the Court this 24th day of September, A. D. 1937,

Adjudged, ordered and decreed, that the motion of plaintiff to strike paragraph 12 and defenses numbered 2 and 3 of the separate answer of defendants Harry H. Woodring, Secretary of War,
171 and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal, and for the entry of a decree pro confesso against said defendants be and the same is hereby granted; and, the said defendants, Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal, having elected to stand on their answer as filed and having stipulated that a final decree be entered at this time, it is further

Adjudged, ordered and decreed, that judgment be entered for the plaintiff against the defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal, for the sum of $368,327.71, with interest at the legal rate from September 1, 1937, until paid, representing the balance due plaintiff after crediting defendants with total dividends of 60% paid unsecured creditors of the Commercial National Bank of Washington, D. C.; and it is further.

Adjudged, ordered and decreed, that the defendants Harry H. Woodring, Secretary of War, and H. A. A. Smith, General Purchasing Officer and Chief of Washington Office of Panama Canal, are entitled to file a claim against the Receiver of the Commercial National Bank of Washington, D. C., and to receive such further dividends thereon as are paid to unsecured depositors and other general creditors of said bank; and it is further

Adjudged, ordered and decreed, that execution may issue against the defendants upon the judgment herein awarded.

O. R. LUHRING, *Justice.*

172 The defendants, by their attorneys, object and except to the entry of the above order and decree of the Court, which objection and exception is hereby allowed by the Court, and an appeal is noted in open court to the United States Court of Appeals for the District of Columbia, which appeal is hereby allowed by the Court.

O. R. LUHRING, *Justice.*

No objection to the form. The defendants consent to the entry of a final decree herein in place of a decree pro confesso.

H. L. UNDERWOOD,
Assistant United States Attorney.

173 *Assignment of errors*

Filed September 27, 1937

* * * * * * *

The defendant, United States Shipping Board Merchant Fleet Corporation, assigns as errors in the findings, conclusions, rulings and decree of the court the following:

178 *Stipulation.*

Filed October 12, 1937.

* * * * * * *

It is hereby stipulated by and between the plaintiff and the defendants, Inland Waterways Corporation, United States Shipping Board Merchant Fleet Corporation, and Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, acting by their respective counsel herein, that the Consolidated Designation of Record hereto attached, may, in the interest of expedition and economy, be filed in lieu of and in substitution for the separate Designations of Record heretofore filed herein by these defendants.

SHERLEY, FAUST, AND WILSON,
By George B. Springston.
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.
LESLIE C. GARNETT,
United States Attorney,
Attorney for said defendants.

179 *Consolidated designation of record.*

The Clerk will please prepare the record on appeal of the defendants Inland Waterways Corporation, United States Shipping Board Merchant Fleet Corporation, and Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, including therein the following:

1. Amended bill of complaint, with all exhibits.
2. Separate answers of Inland Waterways Corporation and of United States Shipping Board Merchant Fleet Corporation with exhibits.
3. Separate stipulations that separate answer to original bill of complaint of defendant Inland Waterways Corporation and of United States Shipping Board Merchant Fleet Corporation may be taken and accepted as answer to amended bill.
4. Joint answer of Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, to amended bill of complaint.
5. Order substituting Carl A. Hardee, Receiver, as plaintiff in lieu of Robert C. Baldwin.
6. Order substituting Harry H. Woodring, Secretary of War, and H. A. A. Smith, Chief of Office and General Purchasing Officer, Panama Canal, as parties defendant in lieu of George H. Dern, deceased, and Arthur L. Flint, deceased.

180 7. Plaintiff's separate motions to strike portions of answer of each of these defendants' and for decree pro confesso against each defendant.

8. Memorandum of the court sustaining plaintiffs' motions to strike and for decree pro confesso.
9. Separate final decrees against each of these defendants.
10. Notations of appeal of each of these defendants.

11. Separate assignment of errors of each of these defendants.
12. This designation.
13. Stipulation that this designation may be filed in the place of each of the separate designations heretofore filed.

LESLIE G. GARNETT,
United States Attorney.
H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for Defendants:

Service of a copy hereof is hereby acknowledged this 12th day of October, 1937.

SHERLEY, FAUST AND WILSON,
By George B. Springston,
GEORGE B. SPRINGSTON,
Attorneys for Plaintiff.

181 District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 180, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcrip, in cause No. 59008 in Equity, wherein Robert C. Baldwin, Receiver, Commercial National Bank of Washington, D. C., a corporation, is Plaintiff and Inland Waterways Corporation, a Corporation et al., are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22nd day of October, 1937.

[SEAL] C. E. STEWART, *Clerk.*

[Endorsement on cover:] No. 7056. Inland Waterways Corporation et al., Appellants, vs. Hardee, Receiver. United States Court of Appeals for the District of Columbia. Filed Oct. 26, 1937. Moncure Burke, Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1937

Friday, May 13th, A. D. 1938

No. 7056

INLAND WATERWAYS CORPORATION, UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, HARRY H. WOODRING, SECRETARY OF WAR, ET AL., APPELLANTS

vs.

CARY A. HARDEE, RECEIVER OF COMMERCIAL NATIONAL BANK OF WASHINGTON, D. C., A CORPORATION

The argument in the above entitled cause was commenced by Mr. Leslie C. Garnett, attorney for appellant, Secretary of War and Inland Waterways Corp., and was continued by Mr. F. R. Conway, attorney for appellant, Merchant Fleet Corp., and was continued by Mr. Swagar Sherley, attorney for appellee, and was concluded by Mr. George B. Springston, attorney for appellee. (Mr. Justice Stephens and Mr. Justice Edgerton not sitting.)

Opinion

United States Court of Appeals for the District of Columbia

No. 7056

INLAND WATERWAYS CORPORATION; UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION; HARRY H. WOODRING, SECRETARY OF WAR; ET AL., APPELLANTS

v.

CARY A. HARDEE, RECEIVER OF COMMERCIAL NATIONAL BANK OF WASHINGTON, D. C., A CORPORATION, APPELLEE

Appeal from the District Court of the United States for the District of Columbia

Decided October 31, 1938

Leslie C. Garnett, Special Assistant to the Attorney General, David A. Pine, United States Attorney, H. L. Underwood, Assistant United States Attorney, and F. R. Conway, all of Washington, D. C., for appellants.

George B. Springston, Swagar Sherley, Charles F. Wilson, Henry B. Weaver, and George P. Barse, all of Washington, D. C., for appellee.

124240—39——1

Before GRONER, C. J., and MILLER and MINSON, JJ.

GRONER, C. J.: This is a suit brought by the receiver of the insolvent Commercial National Bank of Washington City in behalf of its depositors, creditors, and stockholders against Inland Waterways Corporation, United States Shipping Board Merchant Fleet Corporation, Secretary of War Woodring, and H. A. A. Smith, Purchasing Officer of the Panama Canal. The purpose of the bill is to recover what are claimed to have been preferential payments made by the bank to defendants.

In the case of Fleet Corporation, which we shall dispose of first, the bill alleges that the Corporation deposited various sums of money with the bank; that the bank unlawfully pledged part of its assets (United States Bonds) to the Corporation to secure the deposits; that the bank thereafter became insolvent; and that the receiver appointed to administer its assets, erroneously, and acting under mistake of law, acquiesced in the sale by the Corporation of some of the bonds and redeemed the remainder from the Corporation by paying the market value thereof. The prayer of the bill is that the Corporation be declared trustee for the benefit of the receiver of the sums paid to it and the sums realized by it from the sale and that the receiver have a decree for the amount thereof with interest.

No question is raised as to the form of the proceedings.

The Fleet Corporation answered, admitting the material facts and defending on the ground that the pledge was in all respects valid and lawful. The receiver made motions to strike certain parts of the answer and to enter a decree pro confesso. The trial court sustained the motions and decreed for the amounts claimed, subject to dividends of approximately 60% declared and paid to other creditors. This appeal followed.

Some, and perhaps the most important, of the questions argued here by counsel for the Corporation, were decided by us in O'Connor v. Rhodes, 79 F. 2d 146, 65 App. D. C. 21. That appeal involved the same facts as this and arose under the following circumstances: In August 1934 Thomas E. Rhodes, a depositor in the bank, instituted in the District Court a proceeding against the bank, Baldwin, then receiver, O'Connor, Comptroller, Fleet Corporation; Alien Property Custodian, and others, alleging, inter alia, substantially the facts we have outlined above and praying for restoration of the funds upon the ground that the payments had been preferentially made to the Corporation. The Comptroller and receiver moved to dismiss on the ground that the right to sue in this respect belonged primarily to the receiver and that the plaintiff had no capacity to maintain the suit in the absence of a showing that the receiver had refused to sue. The Corporation and the Custodian moved to dismiss on the same ground, but also on the ground that the Comptroller had authority to exact the pledges and that the bank had authority to make them. We held, for reasons stated in the opinion, that the suit by Rhodes was maintainable and that the bank was without power to pledge its

assets to secure the deposits of the Corporation or the Custodian. On motion for reargument it was shown that the receiver, at the direction of the Comptroller, had reversed his previous attitude as to the validity of the pledge and had himself brought a suit in all respects similar to the Rhodes suit. In these circumstances we modified our opinion to the extent of holding that the lower court might in its discretion stay the Rhodes suit and permit the receiver to prosecute his suit.

The Comptroller and receiver, as well as the Corporation and Custodian, applied to the Supreme Court for certiorari. The petition of the Comptroller and receiver was granted, limited to the question of the right of the depositor, Rhodes, to bring the suit. In view of our disposition of the motion for reargument, which did not foreclose action by the receiver, the Supreme Court affirmed without expressing an opinion on the merits of the case. 297 U. S. 383.

Thereafter the trial court entered a stay order in the Rhodes case, and the present suit was brought to its conclusion in the trial court.

An understanding of the grounds which the Corporation argues on this appeal requires knowledge of the status of the Corporation, which at the time in question was as follows: By the Shipping Act of 1916 (46 U. S. C. A. 801, et seq.) Congress established the United States Shipping Board and gave it the power (Sec. 810) to create a corporation under the District of Columbia laws for the purchase, construction, and operation of merchant vessels in the commerce of the United States. The Board created the Corporation, capitalized at 50 million dollars, and the United States purchased all the stock. Thereafter the Corporation operated in the same manner as a private corporation created for similar purposes would have operated. It could be sued in the State or Federal courts as other corporations. Skinner & Eddy Corp. v. McCarl, 275 U. S. 1. Its employees were not agents of the United States subject to the provisions of Section 41 of the Criminal Code. United States v. Strang, 254 U. S. 491. It was suable for its torts, Panama Railroad v. Curran, 256 F. 768, and was liable for breach of contract. Skinner & Eddy Corp. v. McCarl, supra. In the latter case the Supreme Court, in describing its activities, said that one of the reasons for its incorporation was to enable it to conduct its operations with the freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States. And in Sloan Shipyards Corp. v. U. S. Fleet Corporation, 258 U. S. 549, the Supreme Court said that the fact that it was formed under the laws of the District of Columbia was persuasive that it was expected to contract and to stand suit in its own person. The activities of the Corporation were changed by the Act of 1920 known as the Merchant Marine Act (46 U. S. C. A. 861, et seq.). By that Act Congress authorized the Shipping Board to take over the property held by the Corporation in its own name. This was accomplished by a deed of April 16, 1923. After that date the Corporation was utilized by the Shipping Board as an operating agency to complete projects begun by the

Board and to liquidate certain other phases of the Board's activities. In February 1927 (44 Stat. 1083) Congress changed the name of the Corporation to United States Shipping Board Merchant Fleet Corporation, but made no change in its status.

The deposits which the Corporation made and which the bank secured by pledge of its assets represented: First, funds received by the Fleet Corporation in the ordinary course of its business, the disbursement of which was in the control of the proper officers of the Corporation for corporate purposes. Second, as agent for the Board the Corporation would offer for sale vessels which the United States owned and would receive bids from prospective purchasers. The bidders would be required to pay in advance a certain sum as earnest money. This the Corporation would deposit in an account designated—United States Shipping Board Merchant Fleet Corporation, Agent, Good Faith Deposit Account. When the sale was consummated, the unsuccessful bidders would receive back their earnest payments. The money paid by the successful bidder presumably would go into the regular Corporation agency account, designated—U. S. S. B. M. F. Corp., Agent, Deposit Acc't. It was these accounts which the bank secured by a pledge of its assets, and the question for decision is whether under the facts we have outlined the receiver is entitled to a judgment against the Corporation for the amount of the preference it received (less, of course, an amount proportionate to the dividends which had been paid to other depositors).

On this appeal the Corporation argues four points:

1st, that the deposits were of public money and since the pledge was in substantial conformity to R. S. 3153 (12 U. S. C. A. 90), it was valid;

2d, that if the pledge was invalid the deposits, being public money, were received by the bank in violation of R. S. 5497 (18 U. S. C. A. 182), as the result of which the bank became trustee ex maleficio thereof;

3d, that no recovery can be had against the Corporation because the proceeds of the pledged securities have been deposited in the United States Treasury; and

4th, that the trial court was without jurisdiction because the suit in substance is a suit against the United States.

We shall dispose of these arguments in order.

First. In the circumstances we have narrated we think it clearly appears that the two deposit accounts which stood in the name of the Corporation as agent contained money of the United States. That portion derived from the sale of vessels owned by the United States was obviously the Government's money. The earnest money collected from bidders did not, of course, belong to the United States. The greater part of it was destined to be returned to those whose bids were rejected. But even as to it we think that the custody of the agent was in a sense the custody of the United States. Our opinion in Richmond, F. & P. R. Co. v. McCarl, 62 F. 2d 203, 61 App. D. C. 290, seems to us controlling in this respect.

But the contention of the Corporation does not prevail simply because the money which it received and deposited as agent of the Shipping Board was money of the United States. The question is whether it was the "public moneys" of the United States of the kind Congress had reference to in the statute upon which the Corporation relies in this case. That statute (R. S. 5153, 12 U. S. C. A. 90) authorizes the Secretary of the Treasury to designate a national bank as a depositary of public money and to require such bank to give satisfactory security for its safekeeping and prompt payment. The opinions of the Supreme Court in Texas & Pacific Ry. v. Pottorff, 291 U. S. 245, and Marion v. Sneeden, 291 U. S. 262, established definitely two propositions, which in our view are conclusive on this point. The first is that a national bank has no authority to pledge its assets to secure deposits otherwise than as Congress has expressly provided. The second is that R. S. 5153 has limited application to deposits made by the Secretary of the Treasury and cannot be extended to cover all public funds of every sort which may be deposited in a national bank by someone who holds the funds on behalf of the United States.

The Corporation in this case was not the agent of the Secretary of the Treasury. The deposits made were not made by the Secretary, and the Secretary had no control of these funds until they were covered into the Treasury. For these reasons we adhere to our decision in O'Connor v. Rhodes, supra. There we said that there is nothing in R. S. 5153 to authorize the taking of a pledge by the Corporation acting independently of the Secretary of the Treasury; that there was nothing to show that the deposits were made by direction of the Secretary but everything to the contrary; that there was nothing to show that the depositary bank was designated by the Secretary, but on the contrary that it was definitely proved that the pledge was taken by the Fleet Corporation on its own account.

Since it is not suggested, nor can be, that any other statute supports what was done in this case, we conclude that the pledge of assets by the bank was illegal and void. In this view it is unnecessary to consider those cases holding that, where a pledge is authorized by a statute, substantial compliance with the terms of the statute is sufficient.

Second: What we have said above largely disposes of the contention that if the pledge was invalid the deposits, being of public money, were received by the bank in violation of R. S. 5497 (18 U. S. C. A. 182),[1] as the result of which the bank became trustee ex male-

[1] Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both. (R. S. Sec. 5497; Mar. 4, 1909, c. 321, Sec. 96, 35 Stat. 1103.)

ficio. The statute makes it a criminal offense for any bank not an authorized depositary of public moneys to receive knowingly from any disbursing officer or collector of internal revenue or other agent of the United States any public money on deposit. We think it clear that the purpose of Congress in the enactment of this statute was to make sure that officers of the United States who received their moneys should not deposit them in any other place than a designated Government depositary from which the United States had exacted security. That statute would apply here if it was unlawful for the Corporation to deposit funds collected by it in any other depositary than a bank designated by the Secretary of the Treasury, but it is perfectly clear that there was no restriction, express or implied, upon the power of the Corporation to deposit funds which came into its possession in any depositary which it might select. This seems to us implicit in the language of the Supreme Court in the Skinner & Eddy case, as follows:

"At no time, during the War, or since its close, have the financial transactions of the Fleet Corporation passed through the hands of the general accounting officers of the Government or been passed upon, as accounts of the United States, either by the Comptroller of the Treasury or the Comptroller General. The accounts of the Fleet Corporation, like those of each of the other corporations named, and like those of the Director General of Railroads during Federal Control, have been audited, and the control over their financial transactions has been exercised, in accordance with commercial practice, by the board or the officer charged with the responsibilities of administration. Indeed, an important if not the chief reason for employing these incorporated agencies was to enable them to employ commercial methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States * * *.

* * * * * * *

"For the Fleet Corporation is an entity distinct from the United States and from any of its departments or boards; and the audit and control of its financial transactions is, under the general rules of law and the administrative practice, committed to its own corporate officers except so far as control may be exerted by the Shipping Board * * *."

Since its creation, and even after it was divested of title to assets formerly held by it, the Corporation has exercised this control of its financial affairs free from the supervision and control of the Secretary of the Treasury. From its creation to the present time it has, with the knowledge and consent of Congress and of the Executive Departments of Government, conducted its financial affairs in all respects as a private corporation. Its bank deposits have never been considered subject to the rules and regulations applicable to deposits of public money, and this is illustrated in the regulations of the Reserve

Board effective October 31, 1930, providing that the term "Government Deposit" shall not apply to deposits of the Fleet Corporation. Under these circumstances we think the accounts involved in this case must be treated just as the accounts of any other depositor would be treated.

Counsel for the Corporation rely upon cases like Allen v. United States, 285 F. 678. There a postal official had deposited postal funds in a Massachusetts bank, and the bank had failed. The Court of Appeals held that the United States could recover the amount of the deposit from the bank as trustee ex maleficio. The theory was that, since the postal funds were public money, the postmaster had no authority to make the deposit and that the bank was prohibited by law from receiving it. The distinction between that case and this is clear. In the Allen case the postmaster had no statutory authority to deposit postal money in the particular bank because there was a Government treasurer in Boston designated to receive the money (39 U. S. C. A. 47), and he likewise had no authority because the bank was not an authorized depositary (39 U. S. C. A. 46; and see 31 U. S. C. A. 521). In these circumstances the bank, in receiving the funds, took them in violation of that statute on which the Corporation relies in this branch of the case (18 U. S. C. A. 182). The Allen case, therefore, presented the situation of a bank's receiving a deposit which it was prohibited by law from receiving from a person prohibited by law from making it. No such situation is present here. There was no provision, either in law or custom, against the Corporation's depositing in any bank it chose the funds which came into its possession; and there was equally no prohibition against the bank's receiving such deposit any more than in the case of the deposit of a private corporation. It is true the Corporation designated its accounts as agent accounts and presumably the bank knew it was receiving money of the United States for deposit, but we think that the deposits of public money which a bank is prohibited from receiving under 18 U. S. C. A. 182 are the same and only the same as those which the bank would be authorized to secure by pledge of its assets under 12 U. S. C. A. 90. The deposits of the Corporation, as we have seen, violated no Federal statute. In this view the bank cannot be held to any liability as trustee ex maleficio for the deposits it received.

Third. The answer of the Corporation shows that after it received the proceeds of the pledged securities it covered the money thus realized into the Treasury and is now without power or right to restore it. It insists that this bars a right of recovery against it. But we think the fact that the Corporation has transferred the fund to the United States does not relieve the Corporation of liability. As the Supreme Court said in Sloan Shipyards Corp. v. U. S. Fleet Corporation, supra, "The transfer of the property of the Fleet Corporation to the Shipping Board by the Act of June 5, 1920, c. 250, Sec. 4, 41 Stat. 988, 990, may affect the value of the remedy afforded by the present suit but not the jurisdiction of the Court." In other words, a

plaintiff may have a judgment notwithstanding the defendant is execution proof.

The question, as we think, does not depend upon the ability of the receiver to trace the funds which the Corporation received from the assets of the bank, but is controlled by the rule that one who participates in a breach of trust may be required either to account for the proceeds or respond in damages. Bank of Giles County v. Fidelity & Deposit Co., 84 F. 2d 321. In this case the Corporation deposited funds under its control in a national bank and received from the bank security for the safe return thereof. The pledge was unlawful, and it is of no moment that the bank may have been solvent when the pledge was given, for the pledge became effective only upon insolvency and at that instant became substantially a preferential transfer prohibited by R. S. 5242 (12 U. S. C. A. 91).

When the Corporation demanded and received and used the pledged security and refused to return it after the bank's insolvency, a conversion of trust property ensued. F. & M. State Bank v. Con. School District, 174 Minn. 286, 219 N. W. 163, 65 A. L. R. 1407. There the bank pledged commercial paper with the treasurer of a school district to secure a deposit of school funds, and upon the insolvency of the bank the Commissioner of Banking demanded return of the paper. The Minnesota Court held—just as the Supreme Court held in the Pottorff case—that the absence of statutory authority to pledge assets to secure deposits deprived the bank of any power to do the act; and the court thought the pledge was not only ultra vires and invalid but substantially a fraud upon other depositors whose right it was to share ratably in the assets of the bank upon liquidation; and that, because the refusal to return the pledge was a conversion, the Commissioner of Banks was entitled to maintain an action of trover.

And so we are of opinion that the pledge in question here was a preferential conversion of the bank's assets, and we think the receiver may maintain a suit to recover the pledged securities or, where they have been transferred, is entitled to a decree for their value; and in this respect we think it is no defense to the wrongdoers to say that the securities were sold and the proceeds turned over to the United States. An agent is not excused from liability for his torts because he acted only as agent, whoever his principal may be. The Corporation knew of the insolvency of the bank when under the terms of its pledge it converted the security to its own use, and it cannot escape liability by saying that it acted in this instance for principals who happen to be the United States. While the law is that an agent who receives money on behalf of his principal, to which his principal is not entitled, is not liable where without knowledge of the mistake he pays the money to his principal, the rule has no application here for the reason that the Corporation was charged with knowledge of the invalidity of the pledge when it received and converted it. At best the position of the Corporation is that it paid over the money on

the mistaken assumption of law that the United States were entitled to it. But that is not enough. When an agent does some act which his principal did not or court not authorize, he acts on his own responsibility. No valid authority could have been given the Corporation to exact an illegal pledge; since it did exact such a pledge, it is answerable for its tort without regard to the status of its principals. I Mechem on Agency, sec. 1456; Hirning v. Federal Reserve Bank, 52 F. 2d 382; Vann v. Federal Reserve Bank, 47 F. 2d 786.

Fourth. We think there is no substance to the contention that this is a suit against the United States. In the Rhodes case we denied a similar contention on behalf of the Alien Property Custodian. There is greater reason for denying it in the case of the Corporation for, notwithstanding the deposits consisted of moneys belonging to or in which the United States were interested, the contract itself was the contract of the Corporation; and the fact that Corporation may not now possess any money or nor be able to respond to a money decree against it may, as the Supreme Court said in the Sloan Shipyards case, affect the value of the remedy but not defeat the remedy itself. The receiver is not suing the United States but the Corporation. If its act constituted a tort, as we think it did, the Corporation must respond. See Merchant Fleet Corp. v. Harwood, 281 U. S. 519.

THE SUIT AGAINST THE CANAL ZONE

The bill of complaint joins the Secretary of War and the Purchasing Officer of the Panama Canal, and the facts as to the pledge by the bank to secure Canal Zone funds are in all respects like those of the pledge in the Fleet Corporation case. Money order funds of the Canal Zone were deposited in the bank and, it is claimed, illegally secured by a pledge of bonds made in 1910, to the Secretary of War. When insolvency came, the receiver of the bank mistakenly consented to a conversion of the pledged assets. There is this difference in the two cases—in the Fleet Corporation case it is claimed the money deposited in the bank was money of the United States, whereas in the instant case it is neither alleged nor argued that the deposit is the money of the United States.

The bill alleges that the consent of the receiver (appellee) to the taking over of the pledged assets was given under a mistake of law; that the defendants (appellants) held the same in trust; and the prayer is that the court decree that the excess which appellants receiver over other general creditors be returned to the receiver. The answer, challenges the right of recovery on the following grounds: (1) that authority for the pledge existed—if not directly then by custom and usage; (2) that the receiver is estopped by his conduct to demand recovery; and (3) that the United States are indispensable parties to the suit. The trial court on motion struck out the defenses, and upon appellants' election to stand upon their answer, final decree was entered for the sum of $368,327.71, with

interest, which was the difference between the value of the pledged assets and the dividend which appellants were entitled to receive as general and unsecured creditors of the bank.

First. What has been said in the Fleet Corporation case need not be repeated here. In O'Connor v. Rhodes, supra, following Texas & Pacific Ry. v. Pottorff, supra, and Marion v. Sneeden, supra, we held that R. S. 5153 (12 U. S. C. A. 90) is personal to the Secretary of the Treasury and grants no authority to a national bank to secure deposits of public money by public officers generally. It is necessary here, therefore, that appellants establish their claim of right to demand security, for without such authority the pledges were void and unlawful.

This brings us, then, to a statement of the facts necessary to an understanding of the case. By the Act of June 28, 1902 (32 Stat. 481), Congress authorized the acquisition of the Panama Canal Zone and provided for the establishment of a commission composed of seven members to co-operate with the President in the construction of the canal and the supervision and government of the Zone. By Act of April 28, 1904 (33 Stat. 429), Congress provided that "all the military, civil, and judicial powers as well as the power to make all rules and regulations necessary for the Government of the Canal Zone" should be vested in such person or persons as the President should direct. Pursuant to this authorization the President appointed a commission—subject to the control of the Secretary of War. The Secretary of War on June 24, 1904, directed the chairman of the commission to formulate a plan for "a practical and efficient postal service in said Canal Zone, and including such measures and provisions of the postal service of the United States as are not inapplicable to the conditions of law and fact existing in the Canal Zone." The Commission inaugurated a postal service for the Zone September 2, 1904. At that time there was no postal savings system in the United States. Provision for it and for securing deposits of postal savings funds was first made by Act of June 25, 1910, and was confined to continental United States, Alaska, and Puerto Rico (39 U. S. C. A. 759). A year later the President by executive order (September 8, 1911) established a postal deposit money order system for the Canal Zone. The order created a board of trustees consisting of the Collector of Revenue, the Auditor, and the Treasurer of the Canal Zone to supervise and administer it. The board thus constituted was given power "to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices." It is significant in this respect that the act creating the United States postal savings system directed and required the board of trustees provided for therein to take security from banks in which the postal saving funds were deposited, whereas in the executive order creating the Canal system and in the Act which authorized it there was no similar requirement. The board was left

free to make rules and regulations for the general conduct of the system. So far as appears, no regulation requiring banks to give security for deposits was ever made. The executive order itself designated the Treasury of the Zone as depository or custodian of the funds.

By Act of August 24, 1912 (37 Stat. 560), Congress validated generally all orders, rules, and regulations promulgated in the Canal Zone by authority of the President. But since there was not then an order or rule authorizing the securing of deposits, the ratifying statute was wholly ineffective to confer the authority claimed by appellants here.

By Executive order of September 5, 1914, effective October 1, 1914, the then existing Postal Savings System of the Canal Zone was terminated, and the order provided that thereafter "For the accommodation of persons desiring to deposit their savings in the post offices of the Canal Zone, money orders may be issued in the Canal Zone payable to the purchaser at the office of issue, for which no fee shall be charged." In accordance with this order deposit money orders were issued, and Congress in 1916 (39 Stat. 528) provided that such orders should bear interest at a rate not exceeding 2 per cent and also "that the interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders. * * *" This Act was a recognition and approval by Congress of the Executive order providing local machinery for the issuing of money orders. And it would appear also to constitute recognition and approval of the depositing of money-order funds under regulations. But the difficulty is that, so far as we can discover or have been advised, there were no regulations in this respect in existence.

Appellants next rely upon a regulation promulgated in 1923 and known as "Governor's Circular No. 660–61", as follows:

"Postal savings, money orders, clubhouse and other trust and security funds received shall be remitted to depositories in accordance with contracts entered into by the Secretary of War, and disbursed only on vouchers or warrants approved by the Auditor. Tolls and other revenues of the United States shall be deposited to the credit of the Treasurer of the United States in accordance with laws and regulations prescribed therefor, and any funds due the Panama Railroad Company in excess of currency transferred to the Paymaster shall be deposited to the credit of the Panama Railroad Company in local depositories. * * *"

They insist that the circular was merely a recognition of what had been the former practice, which they claim had been ratified by the 1912 Act of Congress. We think the answer to their contention is first, that the circular was promulgated about seven years after the passage of the Act (Act of 1916) which, as we have pointed out, was itself some three or four years after the formerly existing system had been abolished; and, second, that neither at the time of the pas-

sage of the Act nor at any time prior thereto was there any Executive order, rule, or regulation effective in the Zone, or any Act of Congress, general or local, authorizing the Secretary of War to require bank security, or any Act of Congress specifically authorizing national banks to provide it. Nor was there such rule or regulation in effect at the time the circular was issued. And, finally, there was no authority of law then or thereafter whereby the Governor any more than the Secretary of War could make valid a pledge which the bank could not validly make. Hence, we think the most the prior approving Acts of Congress (Act of 1912–Act of 1916) professed to do, was to give recognition to such practices as had prior thereto been authorized by regulations promulgated by the President. And, as we have seen, no regulation authorizing the taking of a pledge to secure the deposits was ever so made. Congress has not at any time either directly or indirectly said that banks receiving Canal Zone postal funds shall give security for their safe return. And this specific authorization, the Supreme Court has held, is a condition precedent to the validity of a pledge.

It is next insisted that the later Act of February 16, 1933 (47 Stat. 812, 48 U. S. C. A. 1323a), which we quote,[2] is in effect a ratification of the action and policy of the Secretary of War in requiring the security. The Act provides that the postal service of the Canal Zone shall be governed by such laws and rules and regulations of the United States service as are not inapplicable to conditions existing in the Canal Zone. The Act authorizes the Governor to make rules and regulations necessary for the operation of the service. Presumably this authority was to be exercised to conform the local to the continental system in those respects in which it was considered that uniformity was desirable. If it be conceded that this included the right to make regulations to secure deposits of postal funds in conformity to the American system, it admittedly was not done. If it be likewise conceded that it included the right to demand security by "rule or regulation," admittedly also this was not done. The American system provided for a board of trustees, consisting of the Postmaster General, the Secretary of War, and the Attorney General, to deposit postal savings funds in solvent banks and to require security. 39 U. S. C. A. 751, 759. But neither when the Act was passed nor at any subsequent time was there a similar board in office under the Canal system. Nor at any time thereafter did the Governor make an rule or regulation requiring funds to be deposited in banks or any rule or regulation authorizing or requiring exaction of a pledge as security. In this state of the record it seems clear that

[2] The postal service of the Canal Zone shall be governed by such of the laws, rules, and regulations of the Postal Service of the United States as are not inapplicable to the conditions existing in the Canal Zone, and the Governor of the Panama Canal is authorized to establish new post offices or discontinue those already established, to provide such rules and regulations as are necessary for the operation of the service, to appoint the personnel thereof, and to prescribe the postage stamps and other stamped paper which shall be used in such service: *Provided, however,* That the expenses of operating the Canal Zone postal service shall be defrayed, so far as possible, from the revenue derived therefrom, the use of which for that purpose is hereby authorized.

the action of the Secretary of War in 1910 in requiring the pledge was unauthorized, because it was unsupported by any statute, rule, or regulation then or thereafter in effect.

This brings us, then, to the question of whether the practice shown to have existed in this case created a custom or usage which legalized the pledge. The answer must be in the negative. While the pledge was made and taken in good faith, it violated the provisions of the National Bank Act designed to secure uniformity in the treatment of depositors. Texas & Pacific Ry. v. Pottorff, supra. Since the bank was without power to pledge its assets to secure deposits, the pledge was absolutely invalid, and the length of time of the pledge and the good faith of the transaction cannot give it validity. City of Fort Worth v. McCamey, 93 F. 2d 964; Leonard v. Gage, et al., 94 F.2d 19. Nor can custom create a valid contract where the power to make it is nonexistent. Besides, no custom of national banks generally in relation to the pledge of assets to secure deposits is shown—certainly to no greater extent than was true in the Pottorff and Sneeden cases where a similar contention was denied.

Second. We do not think the receiver is estopped to maintain the suit because he agreed, at the instance of the Comptroller of the Currency, that the pledged securities should be taken over by the Secretary of War. The receiver is an officer of the United States, Ex Parte Chetwood, 165 U. S. 443, and estoppel does not lie against such an officer to recover money paid out under mistake of law. Texas & Pacific Ry. v. Pottorff, supra; O'Connor v. Rhodes, supra. The answer to this contention is well expressed in Hood v. Hardesty, Receiver, 94 F. 2d 26, where it was said in a similar case:

"On the second question, the position of defendant is that there was a voluntary payment of defendant's deposit under mistake of law, and that payment so made cannot be recovered. There are two answers to this; first, that the receiver of a national bank is an administrative officer of the United States and is not bound by the rule precluding the recovery of money voluntarily paid under mistake of law; second, that to permit the assets of the failed national bank to be thus applied in extinguishment of unsecured claims for deposits would contravene the federal statutes forbidding preferences to creditors and requiring the equal and ratable distribution of assets."

See also Leonard v. Gage, 94 F. 2d 19, 23, 24; Rusch v. Baer, 18 F. Supp. 732.

Third. We think the United States are not indispensable parties to this suit and that this is not a suit against the United States. The argument is that the loss which will result from the recovery of the bonds or the proceeds of the bonds will be the loss of the United States because of a moral obligation to repay the holders of deposits money orders, and that, in these circumstances the United States are indispensable parties and have not consented to be sued. In O'Connor v. Rhodes we said on this point in the case against the Alien Property Custodian that the suit could not be defeated on the

theory that it was one against the United States. We think this was right. If a suit were brought against the Alien Property Custodian for the recovery of seized property and the evidence showed that the Custodian has erroneously turned over the property to another person not entitled thereto, it would be no defense to say that a judgment against the Custodian would, because of a moral obligation, have to be satisfied ultimately by the United States. Cf. Becker Steel Company v. Cummings, 296 U. S. 74. We think the same reasoning applies here. The proceeds of the pledge sought to be recovered in this suit do not belong to the United States and have not been covered into the Treasury. Nor is there any law under which they can be so covered. The money which the Secretary of War has is money of the bank out of which all creditors are entitled to be paid ratably. In these circumstances it is of no consequence what the United States may or may not do about the deficiency in the Canal Zone postal funds, if one should exist. The question is rather, whether there was a valid authorization for the pledge. If there was not and the Secretary of War participated in a conversion of the bank's assets, he must restore the bonds or refund the proceeds from their sale. The pledged bonds or their proceeds are in the hands of the Secretary of War, and the rule which we think the cases cited lay down requires him now to respond to judgment just as any other person who had participated in a preferential transfer would be compelled to respond.

THE CASE OF INLAND WATERWAYS CORPORATION

The allegations of the bill as to Inland Waterways Corporation parallel in all respects the charges against Fleet Corporation and Canal Zone. The circumstances as to the pledges were the same in all three cases. The grounds of defense were likewise the same, including the ground stressed here that the Corporation is an instrumentality of Government created to carry out the purposes declared in the Transportation Act of 1920 (41 Stat. 456), that its assets are assets of the Government and its money public moneys, and that any decree against it would materially affect the United States. There is this additional ground—that the receiver's remedy, if he has any, is at law.

The trial court decreed against the Corporation for the value of the pledged assets, less the dividend paid to other creditors of the bank.

The status of the Inland Waterways Corporation is as follows: It was created by Act of Congress June 3, 1924 (43 Stat. 360, 49 U. S. C. A. 151, 156). Its capital stock was fixed at fifteen million dollars and was wholly subscribed and paid for by the United States. The purpose of its creation was to continue through a corporate organization the operation of the barge and towboat transportation system then conducted under the direction of the Secretary of War on

certain inland waterways of the country. The Act provides that, after the Corporation shall have been organized, it shall carry on the business of a common carrier of freight by water, conforming in all respects to the laws applicable to railway transportation, and the Interstate Commerce Commission is given authority to fix rates and, generally speaking, to exercise the same control exercised over common carriers by rail. It is provided the Corporation should be managed by a board of directors and such other officers and servants as should be necessary in the conduct of the business. It should have succession in its corporate name during its existence; could sue and be sued in its corporate name and adopt a corporate seal; make contracts; acquire, hold, and dispose of property; employ and pay officers and employees; and conduct the business of a common carrier by water and generally have such powers as are necessary to carry out the purposes of its creation. In short, it was created to function in all respects as a private corporation. In this state of the record we think the argument in favor of immunity is no more persuasive here than in the case of Fleet Corporation, and that, like Fleet Corporation, it is liable for its wrongful acts just as in the case of any private corporation. Sloan Shipyards Corp. v. U. S. Fleet Corporation, 258 U. S. 549; Skinner & Eddy v. McCarl, 275 U. S. 1; Merchant Fleet Corp. v. Harwood, 281 U. S. 519.

Since no useful purpose will be served in repeating what has been said in the other cases as to the invalidity of the pledge and the right of the receiver to demand and receive back the pledged security, the only other question left for discussion is whether the suit can be maintained in equity. We think it can. It is well established that one who participates in a breach of trust may be held liable in a court of equity to account for the trust property or its proceeds or to respond in damages. Bank of Giles County v. Fidelity & Deposit Co., 84 F. 2d 321, 324. The purpose of the bill is to recover the bonds for the benefit of the creditors of the bank, who are entitled to have them or their proceeds administered as a trust. The charge is that the Corporation illegally received the bonds and holds them or the proceeds thereof as trustee for the bank's creditors. The theory of this is that the bonds or their proceeds belong to the creditors; that they represent trust funds to the same extent as the other assets of the bank; that their transfer to the Corporation was illegal; and that a court of equity has power to impress the fund in the hands of the Corporation with a lien. Unquestionably, since—as we hold—the pledge was illegal, its effect was to create an unlawful preference. The suit is to set aside the preference and recover the proceeds, and the practice in like circumstances has been to sue in equity. An examination of the cases since the Pottorff case, in which similar pledges were held illegal, shows that in the great majority of them the proceeding was in equity, and in Webb v. American Surety Co., 88 F. 2d 171, Judge Hutcheson said on this question:

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"I think this suit is one essential in equity, requiring the equitable application of the principles of recoupment and set off and the granting of equitable relief."

And in another similar case Judge Parker said:

"Defendant . . . has received from the proceeds of the bonds improperly pledged, funds to which he is not legally entitled . . . It is well settled that in such a case a court of equity will direct restitution."

Hood *v.* Hardesty, 94 F. 2d 26, 29.

The result of declaring the pledge void is to insure a ratable distribution of the trust fund to the creditors of the bank. Considered in that view, and it appearing that the Corporation has money in its hands which in equity belongs to someone else, a court of equity has power to order it paid to the person entitled to it.

We are, therefore, of opinion in this case, as in the others, that the decision of the lower court is correct and should be, and is, affirmed.

Affirmed.

Monday, October 31st, A. D. 1938

No. 7056, October Term, 1938

INLAND WATERWAYS CORPORATION, UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, HARRY H. WOODRING, SECRETARY OF WAR, ET AL., APPELLANTS

vs.

CARY A. HARDEE, RECEIVER OF COMMERCIAL NATIONAL BANK OF WASHINGTON, D. C., A CORPORATION

Appeal from the District Court of the United States for the District of Columbia

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Per Mr. Chief Justice Groner, October 31, 1938.

The Clerk will please prepare the transcript of record in connection with the application of the Inland Waterways Corporation, United States Shipping Board Merchant Fleet Corporation, Harry H. Woodring, Secretary of War, et al., to the Supreme Court of the United States for a writ of certiorari in the above-entitled case, and include in the same the following:

1. The printed record of the proceedings in the lower court as filed in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the court.

4. Judgment of the court.
5. This designation.
6. The Clerk's certificate.

ROBERT H. JACKSON,

Solicitor General, Counsel for Inland Waterways Corporation, United States Shipping Board Merchant Fleet Corporation, Harry H. Woodring, Secretary of War, et al.

JANUARY 23, 1939.

United States Court of Appeals for the District of Columbia

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 122, inclusive, constitute a true copy of the transcript of the record and proceedings of the said Court of Appeals as designated by counsel in the case of: Inland Waterways Corporation, United States Shipping Board Merchant Fleet Corporation, Harry H. Woodring, Secretary of War, et al., Appellants, *vs.* Cary A. Hardee, Receiver of Commercial National Bank of Washington, D. C., a Corporation. No. 7056. October Term, 1938, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this Twenty-fourth day of January A. D. 1939.

[SEAL]

JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia.

U. S. GOVERNMENT PRINTING OFFICE: 1939

Supreme Court of the United States

Order allowing certiorari

Filed March 13, 1939

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Reed took no part in the consideration and decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1939